No. 12071

IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

RAYMOND F. DRAKE, et al.,

Appellants,

vs.

SOUTHERN CALIFORNIA EDISON COMPANY, LTD.,

Appellee.

TRANSCRIPT OF RECORD

Appeal From the District Court of the United States for the Southern District of California, Central Division

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Parker & Company, Law Printers, Los Angeles. Phone TR. 5206.

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INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italics; and likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible an omission from the text is indicated by printing in italics the two words between which the omission seems to occur.]

INDEX TO EXHIBITS

Defendant's Exhibits (Continued): Page

Plaintiffs' Exhibits:

NAMES AND ADDRESSES OF ATTORNEYS:

For Appellants:

DAVID SOKOL
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9700 Wilshire Boulevard
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For Appellee:

NORMAN S. STERRY
GIBSON, DUNN & CRUTCHER
634 South Spring Street
Los Angeles 14, California

GAIL C. LARKIN
E. W. CUNNINGHAM
ROLLIN E. WOODBURY
1113 Edison Building
Los Angeles 13, California [1*]

*Page number appearing at foot of Certified Transcript.

In the District Court of the United States for the Southern District of California
Civil Action No. 5544-WM

RAYMOND F. DRAKE, W. W. BENNETT, F. V. BRIMMER, HAROLD E. COLLINS, and other employees similarly situated,

Plaintiffs,

vs.

SOUTHERN CALIFORNIA EDISON COMPANY, LTD., a corporation,

Defendant.

COMPLAINT UNDER FAIR LABOR STANDARDS ACT OF 1938

Plaintiffs, by way of Complaint, allege as follows:

I.

Plaintiffs bring this action against defendant under and by virtue of an Act of Congress of the United States of America entitled "The Fair Labor Standards Act of 1938" (Act of June 28, 1938, C-678, 58 Stat. 1080; U. S. C., Title 29, Section 201, et seq.), hereinafter called the Act.

II.

Jurisdiction is conferred upon the Court by Section 16(b) of the Act. Plaintiffs allege that, pursuant to Section 16(b) of the Act, they are maintaining this action for and in behalf of themselves and other employees similarly situated.

III.

The defendant, Southern California Edison Company, Ltd., [2] at all times herein mentioned was and now is a corporation organized and existing under and by virtue of the laws of the State of California, having its principal office and place of business in the City of Los Angeles, County of Los Angeles, State of California, where said corporation is engaged in the generation, distribution and sale of electric power. During all the time and periods mentioned herein, the defendant Southern California Edison Company, Ltd., distributed and sold electric power within the State of California, which is generated at its California plants and at its Boulder Dam, Nevada, plant; said defendant, during the period herein set forth, distributed, sold and delivered electric power in excess of Twenty-five Million Dollars ($25,000,000.00) annually to shipbuilding companies, aircraft manufacturers, oil producers, steel producers, aluminum producers, railroads, municipalities, the United States Army, the United States Navy, radio stations, telegraph offices, telephone offices, interstate transportation companies, interstate airline transportation companies, and to hundreds of concerns engaged in the manufacture of goods for interstate commerce, which concerns, at all times herein mentioned, did use the said electric power, sold and distributed and delivered to them by the defendant to carry on their activities in interstate commerce and in the production of goods for interstate commerce.

IV.

That the plaintiffs and all the other employees of said defendant, Southern California Edison Company, Ltd., similarly situated to the plaintiffs during all the times herein mentioned were, and now are, engaged in processes and occupations necessary to the generation, distribution, and sale of the aforesaid electric power by said defendant in interstate commerce, and the plaintiffs and other employees of the defendant, similarly situated to the plaintiffs during the times herein mentioned, were engaged in processes and occupations necessary to the production, distribution [3] and sale of goods in interstate commerce by the customers of said defendant as hereinabove alleged.

V.

That since October 24, 1938, the effective date of the Fair Labor Standards Act, defendant employed the following-named persons, the plaintiffs herein, in the respective capacities and classifications set out herein after their names, to wit:

Name	Classification
Raymond F. Drake	Substation Attendant
W. W. Bennett	Substation Attendant
F. V. Brimmer	Substation Attendant
Harold E. Collins	Substation Operator

VI.

That on frequent occasions since the effective date of the Act, October 24, 1938, plaintiffs and other employees

similarly situated to them employed by the defendant, were employed by the defendant for certain hours in excess of the work-weeks established by Section 7 (a), (1), (2), and (3), of said Act; that the defendant failed to pay the compensation for overtime hours in excess of the work-weeks prescribed by the provisions of said Section; that the dates of employment, number of hours and amounts of compensation for such overtime for the plaintiffs and other employees similarly situated, is a matter reported on the books kept by the defendant; plaintiffs have no complete and accurate record of said dates, hours and compensation claimed to be due, owing and unpaid from the defendant to the plaintiffs and other employees similarly situated, and, accordingly, an accounting should be rendered by the defendant to the plaintiffs from the time that plaintiffs and other employees similarly situated were so employed to the date that this action is adjudged, to determine the amount of said claims. That all of the records of said dates, [4] hours and compensation claimed to be due, owing and unpaid from defendant to the plaintiffs and other employees similarly situated, are in the possession of the defendant, Southern California Edison Company, Ltd. That there is due and owing and unpaid from the said defendant to the said plaintiffs and other employees similarly situated, such compensation for the time during which they and each of them were employed in excess of the work-weeks established by said Act in such amounts as shall be determined by said accounting.

VII.

That the plaintiffs and other employees similarly situated, are entitled to additional sums equal to the amounts claimed by them, as liquidated damages by virtue of the provisions of Section 16(b) of the Act; that plaintiffs have employed David Sokol, Attorney, duly authorized to practice in the above-entitled Court, and by virtue of said Section 16(b) said attorney is entitled to be awarded a reasonable attorney's fee herein.

Wherefore, plaintiffs pray that the defendant be required to account to plaintiffs and other employees similarly situated to plaintiffs, and each of them, for the total number of hours which each has been employed, up to and including the date that this matter shall be determined, in excess of the minimum work-weeks prescribed by said Act, and the amount of compensation that is required to be paid by said Act, and that upon said sums being computed, a judgment be entered for the plaintiffs and other employees similarly situated to plaintiffs and each of them, and against defendant for such amounts as the accounting will show that they are entitled to receive, together with an additional amount as liquidated damages, and in addition, a reasonable sum for attorney's fees.

DAVID SOKOL
Attorney for Plaintiffs

[Endorsed]: Filed Jul. 10, 1946. Edmund L. Smith, Clerk. [5]

[Title of District Court and Cause]

NOTICE OF MOTIONS TO DISMISS AND TO MAKE THE COMPLAINT MORE DEFINITE AND CERTAIN AND TO STRIKE PORTIONS OF THE COMPLAINT

Comes now the defendant Southern California Edison Company, Ltd., a corporation, and moves the Court as follows:

I.

For an order dismissing the said action upon the ground that the said complaint does not state a claim upon which relief can be granted to the plaintiffs or any of them.

II.

For an order dismissing the said action upon the ground that the said complaint does not state a claim upon which relief can be granted to the plaintiffs or any of them in that it does not appear that the plaintiffs or any of them, were engaged in [6] interstate commerce or in the manufacture of goods for interstate commerce.

III.

For an order dismissing the action as to all unnamed parties upon the ground:

1. That the plaintiffs are not authorized to bring a class action or to sue for on behalf of any other employees.

2. That Section 16(b) of the Act (Section 216 United States Labor Code) does not authorize a representative or class action, but merely joining in the same suit separate actions of individual employees.

3. That it be necessary for the defendant, in order to properly prepare for trial, to know the precise plaintiffs whose claims it is to meet.

IV.

In the event the foregoing Motion No. III is denied, for an order dismissing the action as to all unknown parties who do not, within thirty days from the date hereof, or such other time as the court shall fix, intervene in said action, upon the grounds (1) stated in said foregoing Motion No. III; (2) that the plaintiffs are not authorized to prosecute or maintain this action on behalf of anyone other than themselves; that a similar action by Myron E. Glenn and others against this defendant has been pending for considerably more than a year, and a large number of employees and former employees of defendant have intervened in said action; that the issues therein so far as substation operators and attendants are concerned are the same as the issues presented in this action; that the said case of Myron E. Glenn, et al vs. Southern California Edison Company, Ltd., is at issue and ready to be set for trial, and that this action should be consolidated with it for trial; and that it is necessary for the defendant in order to properly prepare for trial as to any employee other than those instituting this suit and the said Glenn suit or intervening therein to know exactly the employees or former employees [7] of the defendant who will be parties to either of said actions, in order that it may properly prepare for trial.

V.

For an order requiring the plaintiffs to make the complaint more definite and certain, or to give the defendant a bill of particulars upon the following point:

How or in what manner the plaintiffs or any of them performed work, labor or services for the defendant in interstate commerce, or in the manufacture of goods for interstate commerce.

VI.

For an order requiring the plaintiffs to make the complaint more definite and certain, or to give the defendant a bill of particulars upon the following point:

The character of work and the normal hours of work of those plaintiffs designated as substation operator and attendant.

VII.

For an order requiring the plaintiffs to make the complaint more definite and certain, or to give the defendant a bill of particulars upon the following point:

The character of work and normal hours of work of those plaintiffs designated as primary servicemen.

VIII.

For an order requiring the plaintiffs to make the complaint more definite and certain, or to give the defendant a bill of particulars upon the following point:

The approximate time and the number of excess hours which it is claimed each plaintiff was employed by the said defendant.

IX.

For an order requiring the plaintiffs to make the complaint more definite and certain, or to give the defendant a bill of particulars upon the following point:

The amount of overtime compensation claimed to be due [8] each plaintiff which it is claimed defendant failed to pay each said plaintiff.

X.

For an order requiring the plaintiffs to make the complaint more definite and certain, or to give the defendant a bill of particulars upon the following point:

The amount which it is claimed is due, owing, or unpaid from the defendant to each of said plaintiffs.

XI.

For an order requiring the plaintiffs to make the complaint more definite and certain, or to give the defendant a bill of particulars upon the following point:

Approximate length of time since October 24, 1938, the effective date of the Fair Labor Standards Act, each of said plaintiffs continued in the employ of defendant and continued as a substation attendant.

XII.

For an order to strike from Paragraph III of said complaint, page 2, lines 11-12, the words and figures:

> "in excess of Twenty-five Million Dollars ($25,000,000.00)."

Said motion being made upon the ground that said words are incompetent, irrelevant and redundant and allege no fact that it would be competent or relevant for the plaintiffs to prove at the time of the trial and does not afford any guide as to the volume or amount of electrical power distributed, generated or sold to alleged companies, or persons alleged to be engaged in the manufacture of goods for interstate commerce.

XIII.

For an order striking from the complaint, Paragraph II, page 1, lines 28-30, the words: [9]

> "Plaintiffs allege that, pursuant to Section 16(b) of the Act, they are maintaining this action for and in behalf of themselves and other employees similarly situated."

from Paragraph IV on page 2, lines 24-26, the words:

> "and all the other employees of said defendant, Southern California Edison Company, Ltd., similarly situated to the plaintiffs"

from Paragraph IV on page 2, lines 30-31, the words:

> "and other employees of the defendant, similarly situated to the plaintiffs"

from Paragraph VI on page 3, lines 16-17, the words:

> "and other employees similarly situated to them"

from Paragraph VI on page 4, line 2, the words:

> "and other employees similarly situated"

and from Paragraph VII on page 4, lines 10-11, the words:

> "and other employees similarly situated,".

Said motion is made (1) upon the grounds that said words are redundant and irrelevant; that plaintiffs have no right to prosecute this suit for any person or persons other than themselves; and (2) upon all the grounds set out in support of defendant's third motion.

XIV.

For an order striking from the complaint, Paragraph VI, page 3, lines 28-32, the words:

> " an accounting should be rendered by the defendant to the plaintiffs from the time that plaintiffs and other employees similarly situated were so employed to the date that this action is adjudged, to determine the amount of said claims."

Said motion will be made upon the ground that the words [10] moved to be stricken are redundant, irrelevant and immaterial; that the plaintiffs are not entitled to bring an action for an accounting; that the action authorized by the statute is an action at law to recover compensation claimed severally to be due the several plaintiffs for excess hours which it is alleged and claimed the several plaintiffs were employed and were not paid for, and for liquidated damages resulting from such non-payment; that the burden is upon each of the plaintiffs to establish the respective claim of each said plaintiff.

GAIL C. LARKIN
E. W. CUNNINGHAM
ROLLIN E. WOODBURY
NORMAN S. STERRY
GIBSON, DUNN & CRUTCHER

By Norman S. Sterry

Attorneys for Defendant, Southern California Edison Company, Ltd.

1113 Edison Building, Los Angeles, California [11]

To: David Sokol, Attorney for Plaintiffs Named Herein:

Please Take Notice That the undersigned will bring the above motions on for hearing before this Court in Courtroom No. 4, United States Courts and Post Office Building, the City of Los Angeles, California, on the 9th day of September, 1946, at 2:00 o'clock P. M., in the afternoon of that day or as soon thereafter as counsel can be heard.

GAIL C. LARKIN
E. W. CUNNINGHAM
ROLLIN E. WOODBURY
NORMAN S. STERRY
GIBSON, DUNN & CRUTCHER

By Norman S. Sterry

Attorneys for Defendant, Southern California Edison Company, Ltd.

1113 Edison Building, Los Angeles, California [12]

Received copy of the within Notice of Motions this 27 day of Aug. 1946. David Sokol, Attorney for Plaintiffs.

[Endorsed]: Filed Aug. 28, 1946. Edmund L. Smith, Clerk. [13]

[Title of District Court and Cause]

ORDER

The several motions of the defendant to dismiss the said Complaint, or in the alternative, to make the same more definite and certain, came on regularly for hearing before the Honorable Wm. C. Mathes, Judge, on the 18th day of November, 1946.

Plaintiffs and interveners appeared by David Sokol, Esq., their counsel, and the defendant by Norman S. Sterry, Esq., and Rollin E. Woodbury, Esq., its counsel. Said motions were presented to the Court and argued by the respective counsel, and the Court [14] being advised thereon, It Is Ordered:

(1) That defendant's motions Nos. I, II, III, V, VI, VII, VIII, IX, X, XI, XIII and XIV, are each severally denied.

(2) That defendant's motion No. XII to strike from the complaint on file herein the words and figures:

> "in excess of Twenty-five Million Dollars ($25,000,000.00),"

is hereby granted.

(3) That defendant's motion No. IV for an order dismissing the action is granted, as follows: Said action is dismissed as to all unknown parties who do not, on or before the 1st day of April, 1947, intervene in said action.

(4) That defendant is given until the 15th day of December, 1946, in which to file its answer to the said complaint herein, and to the various interventions, each intervener having, by stipulation of the parties, adopted the said complaint as his complaint in intervention; and pur-

suant to stipulation and agreement of counsel made in open court, It Is Further Ordered that the defendant may, if it so elects, adopt as its answer in the above entitled cause its answer filed in the suit of Myron E. Glenn, et al, Plaintiffs, vs. Southern California Edison Company, Ltd., a corporation, defendant, No. 4327-WM, or any part of such answer.

(5) It appearing to the Court that the above entitled action is similar in many respects to the case of Myron E. Glenn, et al, Plaintiffs, vs. Southern California Edison Company, Ltd., a corporation, Defendant, No. 4327-WM, and that the issues of fact and law presented in the above entitled action are substantially the same as some of the issues of fact and law presented in the said case of Myron E. Glenn, et al, Plaintiffs vs. Southern California Edison Company, Ltd., a corporation, Defendant, No. 4327-WM, and that the time of Court and of the parties will be conserved by the cases being tried together, and counsel for the respective parties having [15] agreed in open Court that the cases should be consolidated and tried at the same time, and the said case of Glenn v. Southern California Edison Company, Ltd., No. 4327-WM, having heretofore been set for trial on the 25th day of February, 1947, and continued by the Court until the 3rd day of June, 1947,

It Is Hereby Ordered that the above entitled cause of Raymond F. Drake, et al, Plaintiffs, vs. Southern California Edison Company, Ltd., a corporation, Defendant, No. 5544-WM, be, and the same hereby is, consolidated for trial with the said case of Glenn v. Southern Cali-

fornia Edison Company, Ltd., No. 4327-WM, on the said 3rd day of June, 1947.

Done in Open Court this 29 day of November, 1946.

WM. C. MATHES
Judge of the United States District Court

Approved as to Form: November 25, 1946. David Sokol, Attorney for Plaintiffs and Interveners.

[Endorsed]: Filed Nov. 29, 1946. Edmund L. Smith, Clerk. [16]

[Title of District Court and Cause]

ANSWER

Comes now the defendant in the action above entitled and for answer to the complaint as filed by the plaintiffs named in said complaint and as adopted by each intervener herein:

I.

Admits that the plaintiffs and interveners other than the plaintiff F. V. Brimmer and Earl Fred Skinner, intervener, were employed by the defendant as substation attendants during some of the times referred to in said complaint. As to the plaintiff F. V. Brimmer, defendant admits that for a portion of the time he was employed as a substation operator, and for a portion of the time he was employed in the defendant's hydro division. Admits that the said intervener Earl Fred Skinner was employed by the defendant as a [17] substation operator, but denies he was so employed at any time within three years preceding the bringing of the above entitled action.

II.

Defendant denies that any of said plaintiffs or interveners performed any services for it of any character in excess of 40 hours per week or any work or services for which they and each of them have not been fully paid.

III.

The above entitled action having been consolidated with the case of Myron E. Glenn et al v. Southern California Edison Company, Ltd., No. 4327-WM, hereinafter in this answer referred to as the "Glenn case," defendant, as its answer to the complaint herein, adopts as fully as though here set out the First Answer and Defense in the Glenn case other than subparagraph (b) of paragraph I thereof (the allegations in the complaint herein to which said subparagraph (b) would respond having been stricken from the complaint in this action).

For a Further, Second, Separate and Distinct Answer and Defense, and by way of a plea of estoppel:

I.

Defendant adopts as fully as though herein set forth the Second, Separate and Distinct Answer and Defense in said Glenn case.

For a Further, Third, Separate and Distinct Answer and Defense:

I.

Defendant adopts as fully as though herein set forth the Third, Separate and Distinct Answer and Defense in said Glenn case. [18]

For a Further, Fourth, Separate and Distinct Answer and Defense, and by way of plea of the statute of limitations:

I.

Defendant alleges that under Subdivision 1 of Section 340 of the Code of Civil Procedure the cause of action is barred so far as any liquidated damages to the plaintiffs are concerned as to any recovery for services prior to July 10, 1945, performed by said plaintiffs or any of them, and as to the interveners Earl Fred Skinner and C. H. Booker said cause of action is barred so far as any liquidated damages to said interveners are concerned as to any recovery for services prior to September 5, 1945, performed by said interveners or either of them, and as to the intervener Cecil B. Jordan said cause of action is barred so far as any liquidated damages to said intervener are concerned as to any recovery for services prior to November 12, 1945, performed by said intervener.

For a Further, Fifth, Separate and Distinct Answer and Defense, and by way of plea of the statute of limitations:

I.

Defendant alleges that under Subdivision 1 of Section 339 of the Code of Civil Procedure the cause of action is barred as to the plaintiffs herein as to any recovery for services prior to July 10, 1944, performed by said plaintiffs or any of them, and as to the interveners Earl Fred Skinner and C. H. Booker said cause of action is

barred as to said interveners as to any recovery for services prior to September 5, 1944, performed by said interveners or either of them, and as to the intervener Cecil B. Jordan, said cause of action is barred as to said intervener as to any recovery for services prior to November 12, 1944, performed by said intervener. [19]

For a Further, Sixth, Separate and Distinct Answer and Defense, and by way of plea of the statute of limitations:

I.

Defendant alleges that under Subdivision 1 of Section 338 of the Code of Civil Procedure the cause of action is barred as to the plaintiffs herein as to any recovery for services prior to July 10, 1943, performed by said plaintiffs or any of them, and as to the interveners Earl Fred Skinner and C. H. Booker said cause of action is barred as to said interveners as to any recovery for services prior to September 5, 1943, performed by said interveners or either of them, and as to the intervener Cecil B. Jordan said cause of action is barred as to said intervener as to any recovery for services prior to November 12, 1943, performed by said intervener.

For a Further, Seventh, Separate and Distinct Answer and Defense, and by way of plea of the statute of limitations:

I.

Defendant alleges that under Subdivision 1 of Section 339 of the Code of Civil Procedure the cause of action is barred entirely as to the intervener Earl Fred Skinner.

For a Further, Eighth, Separate and Distinct Answer and Defense, and by way of plea of the statute of limitations:

I.

Defendant alleges that under Subdivision 1 of Section 338 of the Code of Civil Procedure the cause of action is barred entirely as to the intervener Earl Fred Skinner.

Wherefore, defendant prays that plaintiffs and interveners take nothing by this action; for its costs of suit herein, and for such other and further relief as to the court may seem [20] just in the premises.

GAIL C. LARKIN
E. W. CUNNINGHAM
ROLLIN E. WOODBURY
NORMAN S. STERRY
GIBSON, DUNN & CRUTCHER
By Norman S. Sterry

Attorneys for Defendant, Southern California Edison Company, Ltd.

STIPULATION

The above case having been consolidated for trial with the case of Myron E. Glenn et al v. Southern California Edison Company, Ltd., No. 4327-WM, referred to in the answer and herein as the "Glenn case," and the said issues in this case being the same as the issues entered in the Glenn case so far as the plaintiffs and interveners therein alleged to be substation operators are concerned, and the defenses that the defendant desires to plead being the same as set up in its answer,

It Is Hereby Stipulated by and between the parties that the said defendant may, as it has in said answer, adopt by reference the various portions of the answer in the Glenn case as set out in the foregoing answer, and that the said portions of the answer in the Glenn case, as set out in said answer, may be deemed for all purposes to have been incorporated in the answer of the defendant herein with the same force and effect as though they had been set out in the defendant's said answer. [21]

Dated: Los Angeles, California, December 14, 1946.

DAVID SOKOL
Attorney for Plaintiffs and Internevers

GAIL C. LARKIN
E. W. CUNNINGHAM
ROLLIN E. WOODBURY
NORMAN S. STERRY
GIBSON, DUNN & CRUTCHER
By Norman S. Sterry
Attorneys for Defendant, Southern California Edison Company, Ltd.

The foregoing stipulation is in accord with an Order of the Court heretofore made and is approved.

Dated: Los Angeles, California, December 16, 1946.

WM. C. MATHES
Judge, United States District Court [22]

Received copy of the within Answer and Stipulation this 14 day of Dec. 1941. David Sokol, Attorney for Plaintiffs and Interveners.

[Endorsed]: Filed Dec. 16, 1946. Edmund L. Smith, Clerk. [23]

[Title of District Court and Cause]

SUPPLEMENTAL ANSWER

Comes now the defendant Southern California Edison Company, Ltd., and pursuant to the stipulation on file herein and order of court made thereon whereby Howard A. McCloud and John W. Simpson were permitted to intervene as of the 5th day of March, 1947, and to adopt the complaint on file herein as their complaint in intervention, and the defendant was deemed to have adopted its answer thereto with permission to file such pleas of the statute of limitations as it deemed applicable to the said interveners, files this, its pleas of the statute of limitations as follows:

For a Further, Ninth, Separate and Distinct Answer and Defense, and by way of plea of the statute of limitations: [24]

I.

Defendant alleges that the cause of action is barred so far as any liquidated damages claimed by the said interveners are concerned under Subdivision 1 of Section 340 of the Code of Civil Procedure as to any recovery for services prior to the 5th day of March, 1946, performed by said interveners, or any of them.

For a Further, Tenth, Separate and Distinct Answer and Defense, and by way of plea of the statute of limitations:

I.

Defendant alleges that the said cause of action is barred as to the said interveners under Subdivision 1 of Section 339 of the Code of Civil Procedure, as to any recovery for services prior to the 5th day of March, 1945, performed by said interveners, or any of them.

For a Further Eleventh, Separate and Distinct Answer and Defense, and by way of plea of the statute of limitations:

I.

Defendant alleges that the said cause of action is barred as to said interveners under Subdivision 1 of Section 338 of the Code of Civil Procedure, as to any recovery for services prior to the 5th day of March, 1944, performed by said interveners, or any of them.

GAIL C. LARKIN
E. W. CUNNINGHAM
ROLLIN E. WOODBURY
NORMAN S. STERRY
GIBSON, DUNN & CRUTCHER
By Norman S. Sterry
Attorneys for Defendant, Southern California Edison Company, Ltd. [25]

Received copy of the within Supplemental Answer this 15th day of April, 1947. David Sokol, Attorney for Plaintiffs.

[Endorsed]: Filed Apr. 15, 1947. Edmund L. Smith, Clerk. [26]

[Title of District Court and Cause]

REQUEST FOR ADMISSION OF FACTS UNDER RULE 36 OF THE FEDERAL RULES OF CIVIL PROCEDURE

To the Defendant and Its Counsel:

Please Take Notice that pursuant to Rule 36 of the Federal Rules of Civil Procedure, you are requested to admit, within 15 days after service upon you of this demand, for the purpose of this action only and subject to all pertinent objections to admissibility which may be interposed at the trial, the following:

1. That the plaintiffs and interveners in the above entitled action were at all times engaged in work and processes necessary to the production of goods in interstate commerce.

2. That the plaintiffs and interveners were at all times engaged in work necessary to the transmission of electric power and energy in interstate commerce.

3. That plaintiffs and interveners substation relief operators were required by defendant to relieve substation operators on days off, vacations and in emergencies. [27]

4. That the plaintiffs and interveners substation relief operators were required by defendant to live at the substation where they were relieving, and remain on duty for 24 hours each day while relieving substation operators.

5. That plaintiffs and interveners substation relief operators lived in special relief quarters furnished by the defendant.

6. That the plaintiffs and interveners were required by the defendant to record on weekly time sheets only 8 hours per day normal working time.

7. That the plaintiffs and interveners were permitted to enter on their weekly time sheets additional time worked only in emergencies.

8. That the plaintiffs and interveners were not compensated for time worked except for the time actually recorded on the weekly time sheet.

Dated, Los Angeles, May 15, 1947.

DAVID SOKOL

Attorney for Plaintiffs and Interveners [28]

[Affidavit of Service by Mail.]

[Endorsed]: Filed May 16, 1947. Edmund L. Smith, Clerk. [29]

[Title of District Court and Cause]

MOTION TO DISMISS AND POINTS AND AUTHORITIES IN SUPPORT THEREOF

Comes now the defendant, Southern California Edison Company, Ltd., and with leave of Court first had and obtained, because of the enactment of the Portal to Portal Act of 1947 subsequent to the joining of issue in the above-entitled matter, moves this Court to dismiss the above-entitled action, upon the grounds:

One. That this Court has now no jurisdiction of the subject matter of the action and has not had

jurisdiction of the subject matter of the action since the effective date of the said Portal to Portal Act of 1947;

Two. That the complaint fails to state a claim upon [30] which relief can be granted and has failed to state such a claim since the effective date of the said Portal to Portal Act of 1947.

Said motion will be made upon all the files and papers in said cause and upon the Points and Authorities filed in support of an identical motion in the case of Myron E. Glenn, et al., vs. Southern California Edison Company, No. 4327-WM, copies of which said Points and Authorities have been served herewith upon you.

Dated: Los Angeles, California, June 26, 1947.

GAIL C. LARKIN
E. W. CUNNINGHAM
ROLLIN E. WOODBURY
NORMAN S. STERRY
GIBSON, DUNN & CRUTCHER

By Norman S. Sterry

Attorneys for Defendant Southern California Edison Company, Ltd.

[Endorsed]: Filed Jun. 27, 1947. Edmund L. Smith, Clerk. [31]

[Title of District Court and Cause]

NOTICE OF HEARING ON DEFENDANT'S MOTION TO DISMISS

To the Plaintiffs in the action above entitled, and to David Sokol, Esq., their attorney:

You, and Each of You, Will Please Take Notice that the undersigned attorneys for the defendant, Southern California Edison Company, Ltd., will bring on for hearing said defendant's Motion to Dismiss, dated June 26th, 1947, and served and filed herewith, before the Honorable William C. Mathes in his Courtroom in the Federal Post Office and Court House Building, in the City of Los Angeles, State of California, on Friday, the 11th day of July, 1947, at the hour of 10:00 o'clock A. M., on said date, [32] or as soon thereafter as counsel can be heard.

Dated: Los Angeles, California, June 26th, 1947.

GAIL C. LARKIN
E. W. CUNNINGHAM
ROLLIN E. WOODBURY
NORMAN S. STERRY
GIBSON, DUNN & CRUTCHER

By Norman S. Sterry

Attorneys for Defendant Southern California Edison Company, Ltd. [33]

Received copy of the within Notice of Hearing of Motion to Dismiss, Motion to Dismiss and Stipulation re Supporting Points and Authorities this 26th day of June 1947. David Sokol, Attorney for Plaintiffs.

[Endorsed]: Filed Jun. 27, 1947. Edmund L. Smith, Clerk. [34]

[Title of District Court and Cause]

DEFENDANT'S RESPONSE TO REQUEST FOR ADMISSION OF FACTS UNDER RULE 36 OF THE RULES OF CIVIL PROCEDURE

The plaintiffs having duly served upon the defendant under Rule 36 of the Federal Rules of Civil Procedure, Request for Admission of Facts, and the defendant having subsequent thereto filed a Motion to Dismiss the cause upon the ground that the Court now has no jurisdiction of the subject matter of the action, and has not had jurisdiction thereof since the effective date of the Portal-to-Portal Act of 1947, and that the Second Amended Complaint does not state a claim upon which relief can be granted and has not [35] stated such claim since the effective date of said Portal-to-Portal Act, and said Motion being set for hearing on the 11th day of July, 1947, and the time within which the defendant is required to respond to said Request, in the event the Court should deny said Motion, expiring on the 1st day of July, 1947, and the defendant in the event,—which it does not anticipate,—of the Court denying its said Motion to Dismiss, not desiring to admit any Request for Admission except as hereinafter stated in the responses thereto, files this, its Responses to the said several Requests for Admission. In doing so, defendant does not waive, but insists upon its Motion to Dismiss upon each and both of said grounds.

I.

Defendant's Response to the First Requested Admission of Fact:

Defendant cannot admit or deny categorically the requested admission, for the reasons that it embraces con-

clusions of law and factual information as to the activities of consumers which the defendant does not now have. Defendant admits that all of the plaintiffs and interveners at all times involved in the litigation were engaged in work necessary for the distribution of its electrical energy to its customers. Defendant further admits that some of its customers were engaged in the production of goods for interstate commerce, and that some of such customers used the electricity furnished in the production of such goods.

II.

Defendant's Response to the Second Requested Admission of Fact:

Defendant denies the requested admission. In this connection, the defendant admits that electrical energy is transmitted to it from Nevada and that such energy is "stepped down" in voltage [36] at its major transmission substations, and after its voltage has been stepped down or altered, it is mingled with its electrical energy obtained from other sources within the State of California and distributed to defendant's customers throughout California. Defendant denies that any of the plaintiffs or interveners were employed at any of such major transmission substations or in the maintenance or operation of any transmission lines from Nevada thereto.

III.

Defendant's Response to the Third Requested Admission of Fact:

Defendant admits that plaintiffs and intervenors, substation relief operators, were employed by the defendant to relieve substation operators on days off, vacations, and during certain other periods when the substation

operator was absent from the job because of sickness or other personal reasons. The defendant cannot ascertain from the form of the requested admission whether anything further than this is contained or implied in the requested admission. If it is, the defendant denies any such further fact or implication.

IV.

Defendant's Response to the Fourth Requested Admission of Fact:

(1) Defendant denies that such relief operators were required to live at the substation, and admits that when relieving a substation operator and attendant the relief operator was required to live in the quarters furnished him by defendant and to remain on or adjacent to the defendant's property during the entire relief period.

(2) Defendant denies that the relief operator was on duty [37] for twenty-four hours a day, and alleges that he would not be on duty except in cases of emergency for more than two to five hours per day.

V.

Defendant's Response to the Fifth Requested Admission of Fact:

Defendant admits the facts requested to be admitted in the fifth requested admission.

VI.

Defendant's Response to the Sixth Requested Admission of Fact:

Defendant denies the facts requested to be admitted by the sixth request for admission.

In this connection, the defendant states:

(1) That the said plaintiffs and intervenors who were substation operators and attendants made out their own

time cards, as alleged in defendant's Answer. That any active duties or services required of them could be performed in from two to five hours a day, and except for certain designated times for calling their switching center and making inspections of the substation, they could perform their services at any time they saw fit, and when not engaged in the active duties required of them, were free to engage in any activities they desired to and which could be performed on defendant's premises. That such plaintiffs and intervenors had no regularly scheduled hours of work; that under the system of payroll accounting applicable to such plaintiffs and intervenors, each made out his own time cards (daily and weekly) from which the monthly time cards of the Company were posted, that such time cards reflected as overtime all call-outs during the night-time hours, as set forth in defendant's answer, which were posted by such employees and for [38] which they were paid at overtime rates of not less than time and a half. Exclusive of such overtime reflected on the time cards, the plaintiffs recorded eight hours for each day worked, notwithstanding the fact that they consumed from only two to five hours per day on the average in active duties during such days. This method of reporting was done with the consent of the defendant and is one of the facts relied on by the defendant in support of its contention that as to such plaintiffs and intervenors as were substation operators and attendants, the defendant and plaintiffs and intervenors regarded their employment as the equivalent of a job of eight hours of active service.

(2) All of the foregoing facts with reference to the substation operators and attendants apply equally to the substation relief operators and to the plaintiffs in defendant's Hydro Division.

VII.

Defendant's Response to the Seventh Requested Admission of Fact:

Defendant denies the facts requested to be admitted in the seventh requested admission.

VIII.

Defendant's Response to the Eighth Requested Admission of Fact:

In answer to the eighth requested admission, the defendant admits that the plaintiffs and intervenors were all paid and compensated for all time worked and for all overtime, as shown by the time cards prepared by the said plaintiffs and intervenors, and further admits that the method of payment and the method of recording time worked is as set forth in the defendant's answer to the Amended Complaint and as set forth in the defendant's answer to the sixth request for admission. The defendant denies that the plain- [39] tiffs and intervenors were not fully compensated for all time in fact worked by them. The defendant cannot ascertain from the form of the requested admission whether anything further is contained or implied in the requested admission; if it is, the defendant denies any such further fact or implication.

Dated: Los Angeles, California, June 30, 1947.

GAIL C. LARKIN
E. W. CUNNINGHAM
ROLLIN E. WOODBURY
NORMAN S. STERRY
GIBSON, DUNN & CRUTCHER
By Norman S. Sterry
Attorneys for Defendant, Southern California Edison Company, Ltd. [40]

[Verified.]

[Endorsed]: Filed Jun. 30, 1947. Edmund L. Smith, Clerk. [41]

[Title of District Court and Cause]

STIPULATION

It Is Hereby Stipulated that the Answers to the Request for Admission in the above entitled case are received within the time permitted by the rules, as extended by stipulation of the parties; that in the companion case of Myron E. Glenn, et al., Plaintiffs, vs. Southern California Edison Company, Ltd., a corporation, Defendant, Civil No. 4327 WM, involving precisely the same issues, and in which the plaintiffs requested precisely the same admissions, the parties filed a written stipulation, approved by the Court, extending the time in which the Answers to the Request for Admission could be filed to and including the 1st day of July, 1947, and made and entered into the same agreement in the [42] above entitled case, but by inadvertence did not reduce the same to writing or file the same; that the said Answers filed in the above entitled case are filed within the time agreed to by the parties, as aforesaid, and that the Court may make an order that the Answers be received and filed with the same force and effect as though filed within ten (10) days after the service upon defendant of the said Request for Admission.

Dated: Los Angeles, California, June 27th, 1947.

DAVID SOKOL
Attorney for Plaintiffs

GAIL C. LARKIN
E. W. CUNNINGHAM
ROLLIN E. WOODBURY
NORMAN S. STERRY
GIBSON, DUNN & CRUTCHER
By Norman S. Sterry
Attorneys for Defendant Southern California Edison Company, Ltd.

The foregoing stipulation is approved, and pursuant to the same, It Is Ordered that the said Answers to Request for Admission be received and filed with the same force and effect as though served and filed within ten (10) days after service of the said Request upon the attorneys for the defendant.

Dated: Los Angeles, California, June 30, 1947.

BEN HARRISON
U. S. District Court Judge [43]

Received copy of the within Responses of Defendant to Request for Admission of Facts, and Stipulation this 30th day of June, 1947. David Sokol, by F. A. LaBelle, Attorney for Plaintiffs.

[Endorsed]: Filed Jun. 30, 1947. Edmund L. Smith, Clerk. [44]

[Title of District Court and Cause]

ORDER

The motion of the defendant to dismiss the above entitled action upon the grounds:

(1) That this court has now no jurisdiction of the subject matter of the action, and has not had jurisdiction of the subject matter of the action since the effective date of the Portal-to-Portal Act of 1947, and

(2) That the complaint fails to state a claim upon which relief can be granted and has failed to state such claim since the effective date of the said Portal-to-Portal Act of 1947,

came on regularly to be heard before the Honorable William C. Mathes, Judge Presiding.

Plaintiffs appeared by David Sokol, Esquire, their [45] attorney, and the defendant by Norman S. Sterry, Esquire, and Rollin E. Woodbury, Esquire, its attorneys, and the said motion was duly argued and submitted to the court, and the court being fully advised in the premises, and it appearing that the complaint does not now, and has not since the effective date of the Portal-to-Portal Act of 1947, set forth "a short and plain statement of the grounds upon which the court's jurisdiction depends" as required by Rule 8(a)(1) of the Federal Rules of Civil Procedure, and it further appearing that defendant may now, pursuant to Rule 12(g) of the Federal Rules of Civil Procedure, raise this question by motion to dismiss since the objection and defense was not available to defendant at the time of hearing of defendant's motion heretofore made and determined herein,

Now, Therefore, It Is Ordered:

(1) That defendant's motion to dismiss be and it is hereby granted with leave to plaintiffs to file an amended complaint on or before August 15, 1947, if so advised.

(2) At the request of plaintiffs' counsel, plaintiffs are given leave to file a motion for summary judgment, together with a memorandum of their points and authorities in support thereof and the statement required by local rule 3(d)(2), at any time on or before August 15, 1947.

(3) Counsel for plaintiffs having indicated that he expects to file a motion for summary judgment, and counsel for the defendant that they will probably file a motion with reference to any amended complaint, the court has noted the above cause upon its calendar Monday, Septem-

ber 22, 1947, for the purpose of hearing motions which may be filed by either of the parties, and direct that all motions addressed [46] to the state of the pleadings, or for summary judgment, be noticed for hearing on September 22, 1947, at the hour of 10:00 A. M.

(4) That if, on or before August 15, 1947, the plaintiffs shall file an amended complaint, or any motion for summary judgment, the defendant shall have until and including September 15, 1947, within which to file any motions addressed to the amended complaint, together with defendant's reply by affidavits, pleading, or points and authorities, to any motion of plaintiffs for summary judgment.

(5) That plaintiffs shall have until and including September 20, 1947, within which to file any reply by way of counter-affidavits or points and authorities.

(6) It Is Further Ordered that the order setting this cause for trial on November 11, 1947, be and is hereby vacated, and the cause is now set for trial at 10:00 A. M. on February 3, 1948, with the cause with which it is now consolidated for trial, to wit, Myron E. Glenn, et al., plaintiffs, v. Southern California Edison Company, Ltd., a corporation, defendant, numbered in this court Civil No. 4327-WM.

Done in Open Court July 11, 1947.

WM. C. MATHES
United States District Judge

[Endorsed]: Filed Jul. 25, 1947. Edmund L. Smith, Clerk. [47]

In the District Court of the United States for the Southern District of California
Central Division

Civil Action No. 5544-WM

RAYMOND F. DRAKE, W. W. BENNETT, F. V. BRIMMER, HAROLD E. COLLINS, HOWARD A. McCLOUD, JOHN W. SIMPSON, EARL FRED SKINNER, CECIL B. JORDAN, C. H. BOOKER,

Plaintiffs,

vs.

SOUTHERN CALIFORNIA EDISON CO., LTD., now known as SOUTHERN CALIFORNIA EDISON COMPANY,

Defendant.

AMENDED COMPLAINT UNDER THE FAIR LABOR STANDARDS ACT OF 1938 AND THE PORTAL-TO-PORTAL ACT OF 1947

First Cause of Action

Plaintiffs, by way of Amended Complaint, allege as follows:

I.

Plaintiffs bring this action against defendant under and by virtue of an Act of Congress of the United States of America entitled, "The Fair Labor Standards Act of 1938" (Act of June 25, 1939, C. 678, 58 Stat. 1080; U. S. C., Title 29, Section 201, et seq.), and the Portal-to-Portal Act of 1947, hereinafter called the Acts. Jurisdiction is conferred upon the Court by said Acts.

II.

The defendant, Southern California Edison Co., [48] Ltd., was at all times herein mentioned a corporation organized and existing under and by virtue of the laws of the State of California, having its principal office and place of business in the City and County of Los Angeles, State of California. That on May 6, 1947, said defendant, Southern California Edison Co., Ltd., changed its corporate name to Southern California Edison Company. That at all the times herein mentioned, said defendant was and now is engaged in the generation, distribution and sale of electric power. That during all of the times herein mentioned, the defendant distributed and sold electric power within the State of California, which was generated at Boulder Dam, Arizona. Defendant, at all times herein mentioned, distributed, sold and delivered electric power generated by it to railroads, army and navy camps, Western Union and Telegraph Agencies, commercial airports, radio broadcasting stations, newspapers, oil producing companies, motion picture producers, fruit packing plants, and to numerous other industrial concerns which used such electric power for the lighting of their establishments and for the operation of machinery and equipment necessary to the transportation, transmittal, manufacturing, processing and production of goods for interstate commerce.

III.

That the defendant employed the plaintiffs named in the caption of this action in processes and occupations necessary to the generation, distribution and sale of the aforesaid electric power by defendant in interstate commerce, and in processes and occupations necessary to the production, distribution and sale of goods in interstate

commerce by the customers of defendant. That the plaintiffs during the period covered hereby were employed by defendant in the following capacities:

Name	Capacity
Raymond F. Drake	Substation Attendant
W. W. Bennett	Substation Attendant [49]
F. V. Brimmer	Substation Attendant
Harold E. Collins	Substation Attendant
Howard A. McCloud	Substation Attendant
John W. Simpson	Substation Attendant
Earl Fred Skinner	Substation Attendant
Cecil B. Jordan	Substation Attendant
C. H. Booker	Substation Attendant

IV.

That plaintiffs at all times mentioned in this action were employed by defendant under an express provision of an oral and written agreement in effect during all of the time of their employment; that pursuant to said agreement, plaintiffs were employed at a stipulated monthly salary based on 40 hours of work each week and were to receive in addition thereto, additional compensation at one and one-half times their regular hourly rate for all hours worked in excess of forty hours in each work week. That plaintiffs worked in excess of forty hours in each work week during the period covered by this action, but did not receive the compensation required by the Acts, although all of said work time and overtime was compensable under said agreement and said Acts.

V.

That the plaintiff, Howard A. McCloud, was in the military service of the United States between April 8, 1943 to December 14, 1945; that pursuant to Section 205

of the Soldiers and Sailors Civil Relief Act of 1940, the amendments thereto, the period of his military service cannot be included in computing any period of limitation for the bringing of this action.

That the plaintiff, John W. Simpson, was in the military service of the United States between October 16, 1940 to September 24, 1945; that pursuant to Section 205 of the Soldiers & Sailors Civil Relief Act of 1940, and amendments thereto, the [50] period of his military service cannot be included in computing any period of limitation for the bringing of this action.

That the plaintiff, Earl Fred Skinner, was in the military service of the United States between March 20, 1945 and March 25, 1946; that pursuant to Section 205 of the Soldiers & Sailors Civil Relief Act of 1940, and amendments thereto, the period of his military service cannot be included in computing any period of limitation for the bringing of this action.

VI.

That on frequent occasions during three years prior to the filing of this action, since July 10, 1943, in the case of those plaintiffs who are not veterans and for a longer period than three years in the case of the plaintiffs who are veterans, the defendant employed all of the plaintiffs for certain hours in excess of the work weeks established by Section 7 (a), (1), (2), (3) of the Fair Labor Standards Act of 1938; that the defendant failed to pay the compensation for overtime hours in excess of the work weeks prescribed by the provisions of said Section; that the dates of employment, number of hours and amounts of compensation for such overtime for the plaintiffs is a matter reported on the books kept by the defendant; plain-

tiffs have no accurate record of said dates, hours and compensation claimed to be due, owing and unpaid from the defendant to the plaintiffs, and, accordingly, an accounting should be rendered by the defendant to the plaintiffs from the time that plaintiffs were so employed to the date that this action is adjudged, to determine the amount of said claims. That all of the records of said dates, hours and compensation claimed to be due, owing and unpaid from defendant to the plaintiffs are in the possession of the defendant. That there is due and owing and unpaid from the said defendant to the said plaintiffs such compensation for the time during which they and each of them were employed in excess of the work weeks established by said Act in [51] such amounts as shall be determined by said accounting.

VII.

That the plaintiffs are entitled to additional sums equal to the amounts claimed by them, as liquidated damages by virture of the provisions of Section 16 (b) of the Fair Labor Standards Act; that plaintiffs have employed David Sokol, attorney duly authorized to practice in the above-entitled Court, and by virtue of said Section 16 (b) said attorney is entitled to be awarded a reasonable attorney's fee herein.

And by Way of a Further, Separate and Distinct Cause of Action, Plaintiffs Allege:

I.

Plaintiffs repeat and reallege all of the allegations set forth in paragraphs I, II, III, V, VI and VII of the first cause of action herein as though the same were set forth herein in full.

II.

That by custom and practice in effect at the time of employment of plaintiffs, and at the time that plaintiffs worked overtime as hereinabove set forth, all of said overtime work was compensable.

Wherefore, plaintiffs pray that the defendant be required to account to plaintiffs and each of them for the total number of hours which each has been employed, up to and including the date that this matter shall be determined, in excess of the minimum work weeks prescribed by said Act, and the amount of compensation that is required to be paid by said Acts, and that said sums being computed, a judgment be entered for the plaintiffs and each of them, and against defendants for such amounts as the accounting will show that they are entitled to receive, together with an additional amount as liquidated damages, and a reasonable sum for attorney's fees, costs herein and interest on the amounts due.

DAVID SOKOL
Attorney for the Plaintiffs [52]

[Verified.]

Received copy of the within this 2 day of Sept., 1947. Norman S. Sterry.

[Affidavit of Service by Mail.]

[Endorsed]: Filed Sep. 2, 1947. Edmund L. Smith, Clerk. [53]

[Title of District Court and Cause]

STIPULATION

It is stipulated by counsel for the respective parties hereto that it may be deemed that the Motion for Partial Summary Judgment filed in Glenn, et al. vs. Southern California Edison Company, entitled Civil No. 4327, was filed also in the above entitled proceeding with the same force and effect as if the Affidavit, Motion and Memorandum in support thereof were filed also in the above entitled action. Plaintiffs adopt said motion, affidavit and memorandum as though the same were set forth herein in full.

It is further stipulated by counsel for the respective parties hereto that any reply or other pleadings filed by the defendant in response to said motion by plaintiffs for partial summary judgment in the Glenn case, shall be deemed to have been made and filed also [54] in the above entitled action without the necessity of defendant actually filing said papers.

Dated: Los Angeles, California, September 2d, 1947.

DAVID SOKOL
Attorney for Plaintiffs

GAIL C. LARKIN
E. W. CUNNINGHAM
ROLLIN E. WOODBURY
NORMAN E. STERRY
GIBSON, DUNN & CRUTCHER
By Norman S. Sterry

Attorneys for Defendant Southern California Edison Company, Ltd.

It is so ordered this 8 day of September, 1947.

WM. C. MATHES

Judge of United States District Court

[Endorsed]: Filed Sep. 8, 1947. Edmund L. Smith, Clerk. [55]

[Title of District Court and Cause]

STIPULATION

Whereas, the issues in the above-entitled case are identical with the issues in the case of Glenn, et al. vs. Southern California Edison Company, Ltd., Number 4327-WM, hereinafter referred to as the "Glenn case"; and

Whereas, the above-entitled case has been consolidated for trial with the said Glenn case; and

Whereas, both parties hereto have always made identical motions in both cases and taken identical proceedings:

Now, Therefore, It Is Stipulated, by and between the parties hereto, that whenever the parties hereto stipulate as to any extension of time for either or both of said parties to do or perform any act in said Glenn case, it may be deemed and understood that the [56] same stipulation is made in the above-entitled case, without a formal stipulation to that effect being signed and filed, and that any stipulation hereafter made with respect to the said

Glenn case of any kind or nature shall be deemed to be filed in, apply to, and be made in this case unless the contrary is so provided in said stipulation.

Dated: Los Angeles, California, September 12, 1947.

DAVID SOKOL
Attorney for Plaintiffs

GAIL C. LARKIN
E. W. CUNNINGHAM
ROLLIN E. WOODBURY
NORMAN S. STERRY
GIBSON, DUNN & CRUTCHER
By Norman S. Sterry
Attorneys for Defendant Southern California Edison Company, Ltd.

ORDER

The foregoing stipulation is approved, and it is so ordered.

Dated: September 16, 1947.

WM. C. MATHES
Judge, United States District Court

[Endorsed]: Filed Sep. 16, 1947. Edmund L. Smith, Clerk. [57]

[Title of District Court and Cause]

ANSWER TO AMENDED COMPLAINT

Comes now the defendant, and for answer to the Amended Complaint on file herein:

Answer to the First Alleged Cause of Action

Specifically answering Paragraph II of the first alleged cause of action in said complaint contained:

I.

(A) Defendant admits that electrical energy generated at Boulder Dam in Arizona was transmitted to certain of defendant's major substations in California, but denies that the electrical energy so received was distributed or sold in the State of California as generated, and in this connection alleges that after it was received, it was passed through the defendant's transformers at its [58] major substations and its voltage reduced or stepped down, and after being so reduced or stepped down it was transmitted into defendant's power lines and commingled with electric energy obtained by defendant from other sources in California, and the commingled electrical energy was sold to defendant's various customers within California. Defendant alleges that none of the plaintiffs performed any service necessary or incident to the receipt of said electrical energy or reducing or stepping down its voltage.

(B) Defendant, basing its answer on its information and belief as to the effect of the facts hereinabove alleged, avers that all of the said sales of electric energy by said defendant were intrastate sales and not interstate sales.

II.

Specifically answering Paragraph III of said first alleged cause of action in said complaint contained:

(A) Defendant admits that it employed each of the said plaintiffs named herein at some time subsequent to July 10, 1943, in the classifications and during the times as follows, and at no other times or periods: [59]

Name	Capacity	Period (All dates inclusive)
Raymond F. Drake	Substation Attendant	8/1/45 to 6/7/46
W. W. Bennett	Substation Attendant	Before 7/10/43 to Present
F. V. Brimmer	Apprentice Substation Operator	1/8/45 to 2/8/45
	Apprentice Operator —Hydro	2/9/45 to 3/15/45
	Substation Attendant and Operator	3/16/45 to 2/28/47 (Utility Man—Territorial—3/1/47 to Present)
Harold E. Collins	Substation Attendant	8/16/43 to Present
Howard A. McCloud	Substation Attendant	Before 7/10/43 to Present
John W. Simpson	Substation Attendant	10/16/45 to Present
Earl Fred Skinner	Substation Attendant	8/26/46 to Present
Cecil B. Jordan	Substation Attendant	10/4/44 to 6/30/45
C. H. Booker	Substation Attendant	5/8/44 to 10/18/46

(B) Defendant alleges that a number of the plaintiffs, during a portion of the time that they were employed as substation attendants or hydro station attendants, as hereinbefore set forth, were employed at three-shift stations, as hereinafter defined.

(C) Defendant denies that any of the said plaintiffs were [60] employed in any occupation necessary to the generation or sale of electrical energy or power in interstate commerce, and in this connection defendant, basing its answer upon its information and belief as to what constitutes intrastate sales, alleges that all, each and every one of its said sales of electrical energy were intrastate. Defendant denies that any of said plaintiffs were engaged in any occupation necessary to the generation, distribution, or sale of electrical energy in interstate commerce, and in this connection alleges that all of said plaintiffs who were substation operators and attendants or substation relief operators and attendants were not engaged in any occupation incident to or connected with the generation of electrical energy, but that their occupation was incident to the distribution of electrical energy by the defendant herein, and that all of the plaintiffs who were employed as hydro station attendants, or hydro station apprentice operators were engaged in occupations incident to the generation of electrical energy, but not connected with or incident to its distribution.

(D) Defendant believes and therefore admits that some of its customers to whom its electrical energy was delivered were engaged in the production of goods for interstate commerce, and that some of such customers used the electricity so furnished in the production of such goods.

III.

Specifically answering Paragraph IV of said first alleged cause of action in said complaint contained:

(A) Defendant admits that each said plaintiff was employed by the defendant in the capacity and during the times heretofore set forth in Paragraph II hereof. Ex-

cept as herein admitted, defendant denies each and every allegation, matter and fact in said Paragraph IV of said complaint contained, generally and specifically.

(B) Further, in connection with the denial of the allegations of Paragraph IV, and in further answer to said Paragraph IV [61] of said first alleged cause of action in said complaint, defendant alleges that each plaintiff was orally employed, and denies that the agreement as to compensation of any said plaintiffs was as in said Paragraph IV alleged. On the contrary, the said defendant alleges that each plaintiff was employed at a monthly salary which was accepted by such plaintiff and was understood and agreed by him to be the full and only compensation for all services to be performed by said employee except for emergency services performed during the nighttime hours, as the terms "emergency services" and "nighttime hours" are hereinafter defined.

(C) Defendant alleges that at some of its substations and some of its hydro stations it operated what are known as three-shift stations, and that the operators worked a scheduled eight-hour shift; that at the expiration of said eight-hour shift they were free to go anywhere they pleased and to engage in any activity they pleased, and were paid not less than time and a half for any services performed by them either after or before their eight-hour shift.

For brevity of designation, periods between shifts will, as to said operators at three-shift stations, be referred to as "nighttime hours," and as to said operators any active service which they were called on to perform during said nighttime hours as "emergency service." Defendant alleges that there was neither contract, custom, nor practice to pay said operators at three-shift stations anything

other than a monthly salary, and not less than time and a half for emergency services, as hereinbefore defined, performed during nighttime hours.

(D) Defendant alleges that the said plaintiffs described as substation operators and attendants who worked at substations other than three-shift stations, were paid a monthly salary which was substantially in excess of the minimums provided for by the Fair Labor [62] Standards Act; that as aforesaid it was agreed between each of said plaintiffs and the defendant that the said monthly salary should be full payment for normal services of each said plaintiff, whether active or inactive. Defendant further alleges that the normal active services required of substation operators and attendants did not ordinarily require in excess of two to five hours a day, and often not more than two to three hours a day; that due to the nature of the work, except as to certain readings which they were required to make at designated hours at certain stations, and, during the winter months, switching at certain stations to turn on street lights, there were no scheduled hours of work for said substation operators and attendants, each substation operator and attendant being allowed to arrange his own hours of work as he saw fit; that the normal active duties of substation operators and attendants, including the plaintiffs employed in that capacity, could be and were ordinarily performed during the daytime; that during a portion of the time subsequent to July 10, 1943, each substation operator and attendant was required by defendant to live on the property of the defendant for five days each week in a house located near the substation and rented to him by defendant, in order to be able to render necessary service at any time in case of an emergency; that each such resident substation operator had the privilege of having his family live with

him. Defendant is informed and believes, and therefore alleges, that each and all of said substation operators having any family availed themselves of said privilege; that if there were any cases in which a substation operator did not do so, it was because for personal reasons he did not desire to have his family or some particular member of it reside with him. Defendant further alleges that during the time he was not required to perform any active service each such plaintiff could engage in any activity he desired which did not take him beyond such distance from the substation or his residence as to prevent his being able to hear a signal requiring emergency service. Defendant further alleges that because of the nature of the employment, it was understood and agreed between each substation operator and [63] attendant, including each plaintiff employed in that capacity, and the said defendant that, evaluating the employment as a whole, the inactive duties of each said plaintiff and the normal active duties were the equivalent of not more than eight hours of active service. Defendant further alleges that, as hereinbefore alleged, each of said plaintiff substation operators and attendants at all times mentioned herein was paid a monthly salary which, as hereinbefore alleges, was paid and received as compensation for all normal active and inactive services performed by said plaintiffs, but that in order to compensate said substation operators and attendants for extraordinary or emergency active duties, defendant, prior to July 10, 1943, until on or about December 24, 1943, paid to substation operators and attendants, including such of the plaintiffs as were then in its employ in said capacity, not less than time and a half for such active duties as they were called on to perform between the hours of 10:00 P. M. and 8:00 A. M., and from on or about December 24, 1943, paid such compen-

sation for such services performed after 6:00 P. M. and prior to 8:00 A. M., said hours being hereinafter referred to for brevity of designation as to said substation operators and attendants and relief operators and attendants as "nighttime hours," and any active service performed by any of said plaintiffs during said nighttime hours, as hereinbefore defined, as "emergency service." That the accounting department of defendant computed the hourly basis for such overtime compensation in the same manner that it computed the hourly basis for overtime compensation of any other operating employee, that is to say, by multiplying the monthly salary by 12 (the number of months in a year), and dividing the result by 52 (the number of weeks in a year), and dividing the result thus determined by 40. That said method of computing the hourly rate was that used as to all employees of the defendant who were paid a monthly salary and was in accordance with the agreement between each said plaintiff and the defendant as hereinbefore alleged; that considering the employment of each said plaintiff as a whole and [64] the slight amount of active duties required, his employment was the equivalent of not more than eight hours of active service.

(E) Defendant alleges that the duties of the substation relief operators were the same as those of the substation operators and attendants, as alleged in Subparagraph "(D)" hereof, with the exception that such relief operators moved from station to station, normally being at any one station only one to two days, and living in housekeeping quarters provided for such purpose near said station. That the substation relief operators were not normally accompanied by nor did they, normally, live with the members of their families at the stations; but that their duties were, at each station, to relieve the opera-

tor, and during their stay at each station their duties would be the same as those of the regular attendant of the station, and the terms and conditions of their employment were the same as hereinbefore alleged as to substation attendants; that is to say, they were paid a monthly salary which was substantially in excess of the minimums provided by the Fair Labor Standards Act. Said salary was paid to relief operators and attendants semimonthly, and it was agreed between each said relief operator and attendant, including each plaintiff employed in that capacity, and the defendant that such salary should be full compensation for all normal services, active or inactive, performed by each said relief operator and attendant; and it was understood and agreed between each said substation relief operator and attendant, including each plaintiff employed in that capacity, and the said defendant that in evaluating the employment as a whole, the active and inactive duties of each such relief operator were the equivalent of not more than eight hours of active service. That prior to, and at all times since July 10, 1943, the said relief substation operators and attendants were, the same as resident substation operators and attendants, paid not less than time and a half for any emergency service performed by them during the nighttime hours, as the said terms "emergency service" and [65] "nighttime hours" are hereinbefore defined in Subparagraph "(D)" hereof.

(F) That the employment of each plaintiff listed as a hydro station attendant and each hydro station apprentice attendant, other that at a three-shift station, was similar to the employment of substation operators and attendants at substations other than three-shift stations; that is to say, each hydro station attendant and apprentice attendant, including each plaintiff employed in that

capacity, was paid a monthly salary, which was paid semimonthly, and it was agreed between each said hydro station attendant, including each plaintiff employed in that capacity, and the defendant, that said salary should be in full payment for all normal services of each said hydro station attendant, whether active or inactive. That at other than three-shift stations, there were no regular scheduled hours of work, but that their active duties ordinarily would not require eight hours of active work, and that it was agreed between each plaintiff and the defendant that in evaluating his employment as a whole it was the equivalent of not more than eight hours of active service. That during a portion of the time subsequent to July 10, 1943, each said hydro station attendant and apprentice attendant employed in that capacity, including each plaintiff employed in that capacity, was required by the defendant to live on the property of the defendant for five days each week, in a house located near the power-house; and during certain days of the week, not exceeding five, and at many stations less than five, when not engaged in any active duty was required to remain so close to the station house or his residence as to be able to hear an alarm bell in case his services were needed in case of an emergency, in order to be able to render necessary services at any time in case of an emergency; that each such resident hydro station attendant and apprentice attendant had the privilege of having his family live with him. Defendant is informed and believes, and therefore alleges, that each and all of said hydro station operators having any family availed themselves of said privilege; that if there were any cases in which a [66] hydro station operator did not do so, it was because for personal reasons he did not desire to have his family or some particular member of it reside with him. Defendant further alleges

that during the time he was not required to perform any active service, each such plaintiff could engage in any activity he pleased which on certain days, as aforesaid, would not take him beyond such distance from his residence and the powerhouse as to prevent him from hearing a signal requiring emergency service.

(G) That at all times mentioned in said amended complaint, each hydro station attendant and apprentice operator has made his own time report. That on such time report there is a space for showing overtime. That prior to and ever since July 10, 1943, each hydro station attendant and apprentice operator (including the plaintiffs employed in said capacities), notwithstanding the fact that his normal active duties would ordinarily be less than eight hours, reported not less than eight hours of work for any day which he reported as working, irrespective whether on that particular day he performed eight hours of active duty or not. That whenever the time reports of any of the hydro station attendants and apprentice operators (including each and all of the plaintiffs employed in such capacities) showed more than forty hours per week, he was paid not less than time and a half for work reported in excess of forty hours for said week; and on and after May, 1943, and at some stations before said date, whenever the time reports of any hydro station attendants or apprentice operators (including each and all of the plaintiffs employed in such capacities) reported more than eight hours of work for any one day, he was paid not less than time and a half for the work reported in excess of eight hours per day, regardless of whether or not his weekly reports showed work in excess of forty hours for that week.

(H) That for the purpose of computing the overtime compensation, the hourly rate was figured in the same

manner as for [67] the said substation operators and attendants as hereinbefore alleged; that said method of computing said hourly rate was that used as to all of its employees who were on a monthly salary, and was in accordance with the agreement between each said plaintiff and the defendant, as hereinbefore alleged; that considering the employment of each plaintiff as a whole, it was the equivalent of not more than eight hours of active service.

(I) Defendant alleges that during the period that the War Manpower Commission decreed a forty-eight-hour week for the industry in Southern California, defendant at various and different times required its operating employees in its several departments to work six days a week instead of five, and that each and all of its said operating employees, including each and all of the plaintiffs who were then in its employ, did work the sixth day without any objection thereto, and without any claim that they were already working more than forty hours per week. Defendant further alleges that for the sixth day, it paid said operating employees, including all of the plaintiffs then in its employe, not less than time and a half for eight hours of work, notwithstanding the fact that, as hereinbefore alleged, normally the active services of each of said plaintiffs on said sixth day would not equal eight hours of active service. Defendant alleges that none of the said plaintiff substation operators and attendants or relief operators and attendants then in its service reported as overtime for the said sixth day more than eight hours of service, except where some one or more of said plaintiffs reported performing emergency service during the nighttime hours, as hereinbefore defined, and that none of the plaintiff hydro station attendants or apprentice attendants reported more than eight hours of overtime service

for the said sixth day, solely because of a requirement not to leave the premises.

(J) Defendant specifically denies that it had any agreement with any of the said plaintiffs as to services or compensation [68] except as hereinbefore alleged, or that it at any time agreed to pay said plaintiffs or any of them for or on account of any activity of the said employees except as herein alleged, and denies that any of the plaintiffs herein, prior to joining in the above-entitled suit, at any time claimed that they were entitled to additional compensation to be paid for by this defendant or gave any indication whatsoever that the employment arrangements as aforesaid did not continue to be mutually acceptable to them.

(K) Defendant alleges that because of the facts hereinbefore alleged, the proper evaluation of the employment of each of its said resident employees, to wit: substation operators and attendants and relief operators and attendants, including each of the plaintiffs employed in that capacity; and hydro station attendants and apprentice attendants, including each of the plaintiffs employed in that capacity, was the equivalent of not more than eight hours of active service, and that the agreement between each of said employees, including each of said plaintiffs herein, as hereinbefore alleged, was a reasonable and proper agreement.

IV.

Specifically answering Paragraph V of said first alleged cause of action in said complaint contained, defendant alleges that its record show that the plaintiff Howard A. McCloud was absent from the service of the defendant from April 8, 1943, to December 12, 1945, inclusive; but defendant has not knowledge, information or belief suffi-

cient to enable it to answer as to whether the said plaintiff actually was in military service during said period or at any time, and on that ground denies that said plaintiff was in military service during said period or any part thereof.

Defendant has no knowledge, information or belief as to whether the plaintiff John W. Simpson was in military service during any part of the period alleged, to wit, October 16, 1940, to [69] September 24, 1945. Defendant alleges that said plaintiff was not in the employ or service of the said defendant on October 16, 1940, and had not been for some time prior thereto; but that after the alleged expiration of his said military service, to wit, on or about the 16th of October, 1945, he entered the service of this defendant.

Defendant has no knowledge, information or belief as to whether the plaintiff Earl Fred Skinner was in military service during any part of the period alleged, to wit, March 20, 1945, to March 25, 1946. Defendant alleges that said plaintiff was not in the employe or service of the said defendant on March 20, 1945; but that after the alleged expiration of his said military service, to wit, on or about the 26th of August, 1946, he entered the service of this defendant.

V.

(A) Specifically answering Paragraph VI of the said first alleged cause of action in said complaint contained, defendant specifically denies that the defendant has employed any of the said plaintiffs herein at any of the times alleged in said paragraph in excess of forty hours per week without paying the said plaintiff at least time and a half therefor.

(B) Further answering said paragraph, defendant admits that it has records showing the hours of work of its various employees, including the plaintiffs, and alleges that such records consist of and are based upon time reports; that the time reports of each plaintiff have been made out and turned in by each said plaintiff, each said time report constituting the representations by each plaintiff making it out as to the time worked by said plaintiff. In this connection the defendant alleges that each and all of its employees of the classes involved in this suit, including each and all of the plaintiffs, made out their own time reports, and that on each time report was a space furnished for overtime. That notwithstanding the facts heretofore alleged, each and all and every employee of the classes involved in this suit, including each and all of the [70] plaintiffs, at all times, that is to say, prior to and after July 10, 1943, to the date hereof, in making out their time reports have customarily reported eight hours of normal duty, irrespective of whether they performed eight hours of active duty, for each and every day which they reported as working; and each and all of the substation operators and attendants and relief operators and attendants, including the plaintiffs employed in that capacity, have reported in the space provided for overtime no overtime except for emergency services performed during the nighttime hours, as said terms have heretofore been defined; that the said hydro station attendants and apprentice attendants, including the plaintiffs employed in such capacity, reported no overtime except where, in unusual emergency cases, they performed more than eight hours of active service per day. During the time that each and all of the said employees of said classes, including the plaintiffs employed in those classes, were required to work six days per week, they reported for the sixth day

eight hours of normal time; and the said substation operators and attendants, and the relief operators and attendants, including the plaintiffs employed in that capacity, made no report for overtime on the sixth day except for emergency service performed during the nighttime hours, as said terms have heretofore been defined; and the said hydro station attendants and apprentice attendants, including the plaintiffs employed in such capacities, reported no overtime for said sixth day except in the event that due to unusual emergency or extraordinary circumstances, they performed actually more than eight hours of active service on said sixth day. Defendant denies that any of its records show that there is any compensation due to the said plaintiffs, or any of them, or any other of its employees, whether for overtime or otherwise, other than current compensation due on the next pay-day. Defendant denies that it employed the said plaintiffs or any of them more than forty hours per week without paying them at least time and a half [71] for the excess time that they were employed beyond forty hours per week. Denies that there is due, owing or unpaid from the defendant to the said plaintiffs, or any of them, compensation for any time for which they were employed in excess of the work-weeks established by said Act, or otherwise. Denies that there is any accounting due, or that any accounting should be required by said defendant to said plaintiffs, or to any other employee.

VI.

(A) Answering Paragraph VII of said first alleged cause of action in said complaint contained, defendant admits that the plaintiffs herein have employed David Sokol herein as their attorney, and that he is an attorney duly authorized to practice in the above-entitled court.

Except as herein admitted, defendants deny the said Paragraph VII and the whole thereof, generally and specifically, and each and every allegation therein contained.

(B) Further answering said Paragraph VII of the first alleged cause of action in said complaint contained, defendant alleges that in not making any payments to the said plaintiffs herein for alleged overtime, it acted at all times in good faith and in a bona fide belief that in paying each said plaintiff the monthly salary agreed upon and the overtime for emergency services as hereinbefore alleged, it was complying with the law and was not violating any statute or contract or custom.

Answer to the Second Alleged Cause of Action

I.

Defendant here adopts, re-alleges, and repeats, with the same force and effect as though fully herein set forth at length, Paragraphs I, II, III, IV, V, and VI of its answer to the said first alleged cause of action. [72]

II.

Said defendant, specifically answering Paragraph II, denies the said paragraph and the whole thereof, generally and specifically.

For a Second, Further, Separate, Distinct Answer and Defense to said complaint and to each and both causes of action therein contained, defendant alleges:

I.

That as alleged in the first answer to the said first alleged cause of action, each and all of the plaintiffs herein were paid a monthly salary and no other compensation

except the overtime payments as alleged and set out in Paragraph III of the said answer to the first alleged cause of action. Defendant alleges that if the contract of employment were, as alleged by said plaintiffs in Paragraph IV of the said first alleged cause of action, based upon a stipulated monthly salary for forty hours of work per week, there was no contract to pay the said resident employees, that is to say, the plaintiffs employed as substation operators and attendants, and relief operators and attendants, and hydro station attendants and apprentice attendants any additional compensation whatever for being required to remain upon the Company's property or so close thereto as to be able to hear the alarm bell, in case their services were needed for emergency work, nor was there any custom or practice to pay any of the said resident employees, to wit, said plaintiffs employed as substation operators and attendants, relief operators and attendants, hydro station attendants and apprentice attendants, any compensation for their being required to remain, as aforesaid, either upon or so near the Company's property, or at or so near their residences, as to be able to hear an alarm bell, and that such activity on their part was not compensable by either contract or custom or practice at any of the said substations or hydro stations [73] or at all.

For a Third, Further, Separate, Distinct Answer and Defense to said complaint and to each and both causes of action therein contained, and by way of plea of estoppel:

I.

Defendant here re-adopts, repeats, and re-alleges Paragraph III of its first answer and defense as fully as though here set forth at length.

II.

Defendant alleges that at all times it relied in good faith upon the respective acts and representations and conduct of the plaintiffs as hereinbefore alleged in Paragraph III of its first answer and defense, incorporated herein by reference; that so relying upon their acts and conduct, as hereinbefore stated, defendant believed in good faith that it was paying each and all of the said plaintiffs herein all the compensation which was due them under their contracts of employment and under any applicable laws, and that the employment arrangement continued to be satisfactory and acceptable to the said plaintiffs and that it was not incurring any penalties or liabilities whatever, and defendant based its tax reports to the United States Government and to the State of California upon the belief that it had no contingent or other liabilities, to any of said plaintiffs because of or on account of their employment, or at all.

III.

Defendant alleges that if any of the said plaintiffs herein at any time prior to the institution of said suit had made or advanced the claims they are now asserting for overtime compensation, defendant, notwitstanding its belief that at all times it was complying with the law, would have taken steps to avoid the possibility of incurring further liability if plaintiffs' claims should be sustained, either by placing the various substations and hydro stations upon a [74] three-shift basis as it did as soon as possible after the institution of the Myron E. Glenn, et al., vs. Southern California Edison Company, Ltd., suit, numbered 4327-WM in this court, or by taking such other appropriate steps as might then have seemed advisable to it.

IV.

Defendant alleges that it would be inequitable and unfair to permit the said plaintiffs, or any of them, to now claim or assert that they, or any of them, and the defendant did not agree that, considering the active and inactive duties of each plaintiff, the evaluation of his employment as a whole was not more than the equivalent of eight hours of active service, or that the said agreement was not a reasonable or proper agreement, or one in conformity with the facts and law, and said plaintiffs, or any of them, ought not now to be heard to claim or assert, and all of the plaintiffs are, and each is, estopped to claim or assert that they did not make the said agreement with the defendant as hereinbefore alleged, or that the said agreement was not reasonable and fair, and in conformity with the facts and law.

For a Fourth, Further, Separate, Distinct Answer and Defense to said complaint and to each and both causes of action therein contained, defendant alleges:

I.

Defendant here adopts, re-alleges, and repeats, with the same force and effect as though fully herein set forth at length, Paragraph III of its first answer to the said first alleged cause of action.

II.

That in the employment of each plaintiff herein in the various occupations as hereinbefore alleged, and under the arrangement and agreements as hereinbefore set out, and in making the monthly payments to each said plaintiff as hereinbefore alleged, plus the [75] overtime for emergency services as hereinbefore defined, and in omitting to make any additional or other payments, the said defend-

ant herein acted in good faith and in the belief that it was fully complying with the provisions both of its contracts and agreements with said employees and with the said Fair Labor Standards Act, and that it acted in conformity with and in reliance upon administrative regulations, orders, rulings, approvals, practices and enforcement policies of the Wage and Hour Administrator, the War Labor Board, and the War Manpower Commission with respect to the class of employers to which defendant belonged.

III.

That in July of 1939, the Wage and Hour Administrator issued Interpretative Bulletin No. 13, said bulletin being revised in October, 1939; in October, 1940; and in November, 1940. That as originally issued and as so revised, the sixth, seventh, and eighth paragraphs thereof read and provided at all times after its promulgation as follows:

> "6. In a few occupations periods of inactivity need not be considered as hours worked even though the employee is subject to call. The answer will generally depend upon the degree to which the employee is free to engage in personal activities during periods of idleness when he is subject to call and the number of consecutive hours that the employee is subject to call without being required to perform active work—i.e., the frequency with which the employee is called upon to engage in work. In these cases, the nature of the employee's work involves long periods of inactivity which the employee may use for uninterrupted sleep, to conduct personal business affairs, to carry on a normal routine of living, etc. A good example of this is the employee of a small

telephone exchange operating a switchboard located in the employee's house. During the night no one is in direct [76] attendance at the switchboard and an alarm bell awakens the operator if a subscriber wishes to make a telephone call. The operator has her bed alongside the switchboard and is able to get several hours of uninterrupted sleep every night, as experience over a considerable period of time may often demonstrate. Thus, if, over a period of several months, a telephone operator has been called upon to answer only a few calls between the hours of twelve and five in the morning, a segregation of such hours worked will probably be justified.

"7. In some cases employees are engaged in active work for part of the day but because of the nature of the job are also required to be on call for 24 hours a day. Thus, for example, a pumper of a stripper well often resides on the premises of his employer. The pumper engages in oiling the pump each day and doing any other necessary work around the well. In the event that the pump stops (at any time during the day or night) the pumper must start it up again. Similarly, caretakers, custodians or watchmen of lumber camps, during the offseason when the camp is closed, live on the premises of the employer, have a regular routine of duty but are subject to call at any time in the event of an emergency. The fact that the employee makes his home at his employer's place of business in these cases does not mean that the employee is necessarily working 24 hours a day. In the ordinary course of events the employee has a normal night's sleep, has ample time in which to eat his meals and has a certain amount of time for relaxation and entirely private pursuits. In some

cases the employee may be free to come and go during certain periods. Thus, here again the facts may justify the conclusion that the employee is not working [77] at all times during which he is subject to call in the event of an emergency, and a reasonable computation of working hours in this situation will be accepted by the Division.

"8. In some cases employees may be subject to call after the completion of their regular working day; employees may be called upon after regular working hours to furnish emergency service to customers. If the employee is required to remain on call in or about the place of business of the company, the time spent should be considered hours worked. If, on the other hand, the employee is merely required to leave word where he can be reached in the event of a call and is not tied down to any particular place, such time need not ordinarily be considered hours worked. The employee, however, should be considered as working at any time during which he is actually making a call and his hours worked would include all time traveling to and from such a call."

IV.

(A) That the Pacific Gas and Electric Company maintains and operates a plant for the generation, purchase, sale and distribution of electrical energy in Northern California and as such is an employer of the class to which defendant belonged.

(B) That in generating electricity, it employed hydro station attendants and relief attendants and apprentice operators, and that it maintained substations for the distribution of its electricity and employed and maintained therein substation operators and attendants and relief

operators and attendants. Defendant on its information and belief alleges that the employment and conditions of employment of said hydro station attendants, relief attendants and apprentice operators, and substation operators and attendants and relief operators and attendants was substantially the same as the [78] employment of the same classes of employees by the defendant herein. Defendant, on its information and belief, alleges that each and all of said employees were paid by the said Pacific Gas and Electric Company a monthly salary, which was understood and agreed between said company and each of said employees to be in full for all of the services, active and inactive, performed by said employees. Defendant is further informed and believes, and therefore alleges, that said Pacific Gas and Electric Company pays each of its said employees for certain overtime for emergency active services performed by them similiar to the practice of the defendant as hereinbefore set forth, and that the terms and conditions of work and employment of each class of resident employees of Pacific Gas and Electric Company was substantially the same as the terms and conditions of work and employment of the same class of plaintiff employees of the defendant herein.

(C) Defendant further alleges on its information and belief that the Utility Workers Organization Committee of the C. I. O., for and on behalf of the said employees and many other classes of employees of the said Pacific Gas and Electric Company in 1943 demanded increased wages from the said Pacific Gas and Electric Company, and after negotiating with the said company made application to the National War Labor Board for increases. That the said National War Labor Board appointed a mediation panel to hear evidence and make recommendations thereof. That the report to the said National War

Labor Board by the said mediation panel as to resident employees, which included substation operators and attendants, and hydro station attendants, set up the Union's position and the Company's position as follows:

"(b) Premium Pay for Resident Employees [79]

"The union requested that a premium of 25 per cent be paid to resident employees to compensate them for being available at their place of employment 24 hours a day.

"Union's Position—The union claims that 24 hours per day of a resident employee's time belong to the company; that the union slogan of 'Eight hours work, eight hours for sleep, eight hours for what you will,' has no meaning for these employees; that they are as much confined to the premises as inmates of the county prison farm and that, since they are so distinctly at a disadvantage as compared to ordinary employees, they should receive some additional compensation.

"Company's Position—The company maintains that such employees receive compensation for more hours than they actually work and that an additional premium is not justified. Resident employees live at or near the place of employment usually in a dwelling furnished by the company. They perform routine duties which do not require sustained effort. The principal requirement is that the employee be available to necessary telephone calls and to perform switching as directed. They may leave the premises by arranging for a substitute. They do not work under direct supervision. They prepare their own time cards. While not actually engaged in duties for the company they are free to engage in entirely

personal pursuits. They have a five-day week. They are paid for 40 hours per week but under normal conditions never work more than 30. They are compensated at one and one-half times the regular rate of pay for hours worked in excess of 40. Since they receive 40 hours' pay for 30 hours' work, they already have a premium of 30 per cent in actuality. To demand premium payments in such case would be to take undue advantage of the necessity of maintaining 24-hour service [80] for the public. The company claims that the National War Labor Board does not sanction payment for non-work; that the situation of a resident attendant is not one of hardship and such jobs are greatly desired; and that the Wage and Hour Division of the Department of Labor has considered the case of such employees and determined that only the hours spent in work need be compensable."

That the recommendation of said panel was as follows:

"3. Resident Employees

"The panel unanimously recommends that no change be directed in the matter of the wages of resident employees.

We were impressed with the fact that they are now receiving 40 hours' pay for 30 hours' work and time and one half for overtime; that they are their own timekeepers; and that they have considerable free time for their own pursuits.

We recognize that they are more or less limited in their coming and going and that in certain surroundings such limitations can be very irksome.

> But balancing the values and the disvalues of the present arrangement we do not believe that undue hardships are involved."

That said report of the panel was made on about the 8th day of July, 1943. That on or about the 28th day of September, 1943, by virtue of and pursuant to the powers vested in it by Executive Order No. 9017 of January 12, 1942, the Executive Orders, directives, and regulations issued October 2, 1942, and the War Labor Disputes Act of June 25, 1943, the National War Labor Board made and issued its order with reference to all the matters in dispute, and in said order adopted the recommendation of the said panel as to resident employees, [81] a portion of said order reading as follows:

> "3. The union's request for premium pay for resident employees of the company is denied."

(D) Defendant on its information and belief alleges that since the situation of the resident employees of the said Paicific Gas and Electric Company so far as hours and conditions of work and method of payment was in all respects substantially the same as the hours and conditions of work and method of payment of such plaintiffs herein, this defendant at all times in good faith believed that the said order as to resident employees of the War Labor Board was equally applicable to it and to each and all of such plaintiffs involved herein, and to all other employees performing the said services of such plaintiffs herein, and relied on said order.

V.

That shortly after the effective date of the Fair Labor Standards Act, the Administrator of the Act set up a regional office in Southern California, and, commencing

sometime in 1939 and continuing thereafter, the books and pay-roll records of this defendant were inspected and the Company's compliance was investigated from time to time by representatives of said office, and the said regional office of the Administrator did not at any time inform this defendant that it was in any way violating the Fair Labor Standards Act; but, on the contrary, from time to time the representatives of said Administrator informed defendant that it was operating in strict compliance with the said Act, and on or about the 5th of July, 1941, the said defendant, through its Executive Vice-President, Mr. Mullendore, was publicly advised by the Southern California Manager of the Wage and Hour Division of the United States Department of Labor that defendant was one whose records had been inspected and had been found to be operating in "complete compliance with the Act." [82]

VI.

That at no time since the effective date of the Fair Labor Standards Act has the Administrator or any representative of the Administrator or the War Labor Board, or any other governmental agency, made any complaint that the defendant was in any way violating the said Fair Labor Standards Act in its employment and payment to the plaintiffs herein and other of its employees in the same classes of employment as the said plaintiffs herein.

VII.

Defendant alleges that at all times it relied in good faith upon each and all of the aforesaid actions, rulings, and interpretations of the said administrative agencies of the Government of the United States.

For a Fifth, Further, Separate, Distinct Answer and Defense to said complaint and to each and both causes of action therein contained, defendant alleges:

I.

That any award of liquidated damages against the defendant as prayed for in said amended complaint will operate to deprive the defendant of its property without due process of law, in violation of the Fifth Amendment of the Constitution of the United States of America.

For a Sixth, Further, Separate, Distinct Answer and Defense to said complaint and to each and both causes of action therein contained, and by way of plea of the statute of limitations, defendant alleges:

I.

That said action is barred so far as any liquidated damages are concerned under Subdivision 1 of Section 340 of the Code of Civil Procedure of the State of California for any services performed [83] or rendered prior to July 10, 1945, by the plaintiffs Raymond F. Drake, W. W. Bennett, F. V. Brimmer, and Harold E. Collins, or any of them; for any services performed or rendered prior to September 5, 1945, by the plaintiffs Earl Fred Skinner and C. H. Booker, or either of them; for any services performed or rendered prior to November 12, 1945, by the plaintiff Cecil B. Jordan; for any services performed or rendered prior to March 5, 1946, by the plaintiffs Howard A. McCloud and John W. Simpson, or either of them.

For a Seventh, Further, Separate, Distinct Answer and Defense to said complaint and to each and both causes of action therein contained, and by way of plea of the statute of limitations, defendant alleges:

I.

That under Subdivision 1 of Section 339 of the Code of Civil Procedure of the State of California, the action is barred for any services performed or rendered prior to July 10, 1944, by the plaintiffs Raymond F. Drake, W. W. Bennett, F. V. Brimmer, and Harold E. Collins, or any of them; for any services performed or rendered prior to September 5, 1944 by the plaintiffs Earl Fred Skinner and C. H. Booker, or either of them; for any services performed or rendered prior to November 12, 1944, by the plaintiff Cecil B. Jordan; for any services performed or rendered prior to March 5, 1945, by the plaintiffs Howard A. McCloud and John W. Simpson, or either of them.

For an Eighth, Further, Separate, Distinct Answer and Defense to said complaint, and to each and both causes of action therein contained, and by way of plea of the statute of limitations, defendant alleges:

I.

That under Subdivision 1 of Section 338 of the Code of Civil Procedure of the State of California, the action is barred for any [84] services performed or rendered prior to July 10, 1943, by the plaintiffs Raymond F. Drake, W. W. Bennett, F. V. Brimmer, and Harold E.

Collins, or any of them; for any services performed or rendered prior to September 5, 1943, by the plaintiffs Earl Fred Skinner and C. H. Booker, or either of them; for any services performed or rendered prior to November 12, 1943, by the plaintiff Cecil B. Jordan; for any services performed or rendered prior to March 5, 1944, by the plaintiffs Howard A. McCloud and John W. Simpson, or either of them.

Wherefore, defendant prays that plaintiffs take nothing by this action; for its costs of suit herein, and for such other and further relief as to the court may seem just in the premises.

GAIL C. LARKIN
E. W. CUNNINGHAM
ROLLIN E. WOODBURY
NORMAN S. STERRY
GIBSON, DUNN & CRUTCHER

By Norman S. Sterry

Attorneys for Defendant Southern California Edison Company, Ltd. [85]

Received copy of the within Answer this 6 day of October, 1947. David Sokol, Attorney for Plaintiffs.

[Endorsed]: Filed Oct. 6, 1947. Edmund L. Smith, Clerk. [86]

[Title of District Court and Cause]

DEMAND FOR JURY TRIAL

Come now the plaintiffs and demand that the above entitled action be set for trial before a jury on the amended complaint and the issues and defenses raised in the answer of defendant to said amended complaint.

DAVID SOKOL

Attorney for Plaintiffs [87]

[Affidavit of Service by Mail.]

[Endorsed]: Filed Oct. 7, 1947. Edmund L. Smith, Clerk. [88]

[Title of District Court and Cause]

MOTION FOR SUMMARY JUDGMENT

Comes now the defendant Southern California Edison Company, Ltd., and severally moves the court for a summary judgment in favor of the defendant against each several plaintiff upon the ground that on the entire record it appears as a matter of law that the defendant is entitled to a judgment against each several plaintiff and that there is no genuine issue as to any material fact which, if decided in favor of the plaintiffs, or any of them, would entitle the plaintiffs, or any individual plaintiff, to a judgment.

Said motion is made and based upon all the files and records in the above entitled cause and upon all the files and records in the case of Myron E. Glenn, et al. vs. Southern California Edison Company, Ltd., a corpora-

tion, No. 4327-WM (hereinafter referred to as the "Glenn" case), with which the above entitled action [89] has been consolidated for trial, including, but not limited to, the depositions on file in said Glenn case, the affidavits filed therein by plaintiff in support of the motion of certain of the plaintiffs for partial summary judgment, the affidavits filed by the defendant in opposition to said motion, the affidavits filed in said Glenn case in support of the motion of the defendant therein for summary judgment severally against each plaintiff therein, to wit, the affidavits of G. R. Woodman, C. E. Pichler, E. N. Husher, and J. A. Stellern, and upon the points and authorities filed by the defendant in said Glenn case in support of said motion therein for a summary judgment severally against each plaintiff, and the points and authorities filed by said defendant in said Glenn case in opposition to the motion of certain of the plaintiffs for partial summary judgment.

Dated: Los Angeles, California, October 22, 1947.

GAIL C. LARKIN
E. W. CUNNINGHAM
ROLLIN E. WOODBURY
NORMAN S. STERRY
GIBSON, DUNN & CRUTCHER

By Norman S. Sterry

Attorneys for Defendant Southern California Edison Company, Ltd.

[Endorsed]: Filed Oct. 22, 1947. Edmund L. Smith, Clerk. [90]

[Title of District Court and Cause]

MOTION

To: The Plaintiffs in the above entitled action, and to David Sokol, their attorney:

You, and Each of You, Will Please Take Notice that the defendant's motion for a summary judgment severally against each several plaintiff will be called by the defendant for hearing on Tuesday, the 9th day of December, 1947, at ten o'clock a.m., or as soon thereafter as counsel can be heard.

Dated: Los Angeles, California, October 22nd, 1947.

GAIL C. LARKIN
E. W. CUNNINGHAM
ROLLIN E. WOODBURY
NORMAN S. STERRY
GIBSON, DUNN & CRUTCHER

By Norman S. Sterry

Attorneys for Defendant Southern California Edison Company, Ltd. [91]

Received copy of the within Notice and Motion for Summary Judgment this 22nd day of October, 1947. Elizabeth Watson for David Sokol, Attorneys for Plaintiffs.

[Endorsed]: Filed Oct. 22, 1947. Edmund L. Smith, Clerk. [92]

[Title of District Court and Cause]

INTERROGATORIES PROPOUNDED BY DEFENDANT TO PLAINTIFFS

To the Plaintiffs in the above entitled action, and to David Sokol, Esq., their attorney:

Please furnish written answers, under oath, to the following interrogatories:

Interrogatory No. 1:

From and after March 19, 1942, have any of the plaintiffs ever been paid any compensation other than a monthly salary payable semi-monthly (or weekly salary after July 1, 1947) and not less than time and a half for all emergency service reported by them as having been performed during nighttime hours as said [93] terms emergency service and nighttime hours are defined in the answer to the amended complaint?

Interrogatory No. 2:

If the foregoing Interrogatory No. 1 is answered in the affirmative, state the plaintiffs who were paid any such compensation, the dates and amounts of such payments, and the services for which they were paid.

Interrogatory No. 3:

From and after March 19, 1942, did all of the plaintiffs make out their own reports?

Interrogatory No. 4:

If the answer to the foregoing Interrogatory No. 3 is in the negative, state which of said plaintiffs did not make out their own time reports.

Interrogatory No. 5:

From and after March 19, 1942, did all of the plaintiffs customarily report eight hours of work upon every day on which they reported as working?

Interrogatory No. 6:

If the answer to the foregoing Interrogatory No. 5 is in the negative, state which of said plaintiffs did not customarily report eight hours upon any day upon which he reported as working, the dates when he reported less than eight hours, and the conditions under which he reported less than eight hours for any day worked.

Interrogatory No. 7:

From and after March 19, 1942, did any of the plaintiffs [94] ever report any overtime except for emergency service performed during the nighttime hours, as said terms emergency service and nighttime hours are defined in the answer to the amended complaint?

Interrogatory No. 8:

If the answer to the foregoing Interrogatory No. 7 is in the affirmative, state the character of the overtime reported, the dates and amounts thereof, and the plaintiffs by whom the same was reported.

Interrogatory No. 9:

Other than the filing or joining in of this suit, did any of the plaintiffs ever make any demand upon the defendant for any compensation other than their monthly or weekly salary and overtime for emergency service reported by them as having been performed during the nighttime hours, as said terms emergency service and nighttime hours are defined in the answer to the amended complaint?

Interrogatory No. 10:

If the answer to the foregoing Interrogatory No. 9 is in the affirmative, state fully what demands were made, the plaintiffs by whom they were made, the date or dates of such demand or demands, and to whom they were made; and if the demands were in writing, attach a copy of such writing, if oral, state the substance thereof.

Interrogatory No. 11:

During the time that the Substation Division was operating on six days a week, did not each of the plaintiffs report not less than eight hours of overtime for the said sixth [95] day they worked?

Interrogatory No. 12:

If said Interrogatory No. 11 is answered in the negative as to any of the plaintiffs, state which of said plaintiffs did not report at least eight hours of overtime for said sixth day worked, and the dates and conditions under which he reported less than eight hours of overtime for said sixth day worked.

Interrogatory No. 13:

Did any of the plaintiffs ever report more than eight hours of overtime for the sixth day they worked unless they had performed emergency service during the nighttime hours as the terms emergency service and nighttime hours are defined in the answer to the amended complaint?

Interrogatory No. 14:

If the answer to the foregoing Interrogatory No. 13 is in the affirmative, state the dates and character of the overtime reported and by what plaintiffs.

Interrogatory No. 15:

Did any of the plaintiffs have any contract, written or oral, that they should be paid anything other than their monthly or weekly salary for being required during five days a week (and six days a week when the Substation Division was operating upon a 48-hour week) to remain so near to the substation or their residence as to be able to hear and respond to an alarm bell in case their services were needed?

Interrogatory No. 16:

If the foregoing Interrogatory No. 15 is answered in the [96] affirmative, state what was the nature of the contract, whether written or oral, and if written, attach a copy of it; and if oral, state the substance thereof and when and by whom it was made on behalf of the defendant.

Interrogatory No. 17:

Was there any custom or practice of defendant to pay the plaintiffs or any of them any compensation other than their monthly or weekly salary for being required during five days a week (and six days a week when the Substation Division was operating upon a 48-hour week) to remain so near to the substation or their residence as to be able to hear and respond to an alarm bell in case their services were needed?

Interrogatory No. 18:

If the foregoing Interrogatory No. 17 is answered in the affirmative, state fully of what the custom consisted and of what the practice consisted.

Interrogatory No. 19:

What were the active duties of the plaintiff substation operators and attendants?

Interrogatory No. 20:

Approximately how long each day did it require for the said plaintiffs to perform their active duties?

Interrogatory No. 21:

Was there any time fixed by defendant during the twenty-four hours in which the plaintiffs were to perform their active duties as set out in answer to the foregoing Interrogatory No. 19? [97]

Interrogatory No. 22:

If you answer the foregoing Interrogatory No. 21 in the affirmative, state the hours in which their said active duties were required to be performed.

Interrogatory No. 23:

Did the plaintiffs or any of them understand that they were employed to work a definite scheduled eight hour daily shift?

Interrogatory No. 24:

If the answer to the foregoing Interrogatory No. 23 is in the negative, state upon what basis the said plaintiffs customarily reported eight hours of work for each day on which they reported working and no overtime except for emergency service performed during the nighttime hours, as said terms emergency service and nighttime hours are defined in the answer to the amended complaint.

Interrogatory No. 25:

What did plaintiff understand said "reported eight hours" referred to Interrogatory No. 24, to represent?

Interrogatory No. 26:

If the answer to the foregoing Interrogatory No. 23 is in the affirmative, did the plaintiffs or any of them understand that their monthly or weekly salary which was paid to them was paid only for such eight hour daily shift?

Interrogatory No. 27:

If the answer to the foregoing Interrogatory No. 26 is in the affirmative, list the names of the plaintiffs who understood [98] that their monthly or weekly salary which was paid to them was paid only for such eight hour daily shift.

Interrogatory No. 28:

Did the plaintiffs or any of them understand that their monthly or weekly salary was payment for anything other than their active duties?

Interrogatory No. 29:

If the foregoing Interrogatory No. 28 is answered in the affirmative, state what other services than their active duties they understood were to be compensated for by their monthly or weekly salary.

Interrogatory No. 30:

From and after March 19, 1942, did plaintiffs or any of them receive any compensation other than their monthly

or weekly salary for being required during five days a week (and six days a week when the Substation Division was operating upon a 48-hour week) to remain so near to the substation or their residence as to be able to hear and respond to an alarm bell in case their services were needed?

Interrogatory No. 31:

If the foregoing Interrogatory No. 30 is answered in the affirmative, state which of said plaintiffs received any such compensation, and state of what such compensation consisted and how it was computed.

Interrogatory No. 32:

Was not each of the plaintiffs told when he was employed as or entered upon the duties of a substation operator and attendant [99] or relief operator and attendant that he would be required during five days of the week (and six days a week when the Substation Division was operating on a 48-hour week) to remain so close to the substation or his residence as to be able to hear and respond to the alarm bell in case his services were needed?

Interrogatory No. 33:

If the foregoing Interrogatory No. 32 is answered in the negative, list which of said plaintiffs were not so informed, then state further what said list of plaintiffs were told with regard to the matters set forth in Interrogatory No. 32.

Interrogatory No. 34:

Was not each of the plaintiffs told when he was employed as or entered upon the duties of a substation operator and attendant or relief-operator and attendant that he would receive a specified monthly or weekly salary?

Interrogatory No. 35:

If the foregoing Interrogatory No. 34 is answered in the negative, list which of said plaintiffs were not so informed and state further what said list of plaintiffs were told with regard to the matters set forth in Interrogatory No. 34.

Dated at Los Angeles, California, this 24th day of October, 1947.

GAIL C. LARKIN
E. W. CUNNINGHAM
ROLLIN E. WOODBURY
NORMAN S. STERRY
GIBSON, DUNN & CRUTCHER

By Norman S. Sterry

Attorneys for defendant Southern California Edison Company, Ltd.

[Endorsed]: Filed Oct. 27, 1947. Edmund L. Smith, Clerk. [100]

[Title of District Court and Cause]

DEFENDANT'S REQUEST FOR ADMISSIONS

To the Plaintiffs in the above entitled action, and to David Sokol, Esq., their attorney:

Please Take Notice that pursuant to Rule 36 of the Federal Rules of Civil Procedure you are requested to admit within fifteen (15) days after service upon you of this request, for the purposes of this action only and subject to all pertinent objections to admissibility that may be interposed at the trial, the following:

1. That the active duties (other than emergency services reported by them as having been performed during nighttime hours as said terms emergency services and nighttime hours are defined in the answer to the amended complaint) of each of the plaintiffs who are [101] alleged in paragraph III of the first cause of action in the amended complaint to have been employed as substation operators and attendants or relief operators and attendants normally consumed substantially less than eight hours per day.

2. That the contract of employment between defendant and the plaintiffs who are alleged in paragraph III of the first cause of action in the amended complaint to have been employed as substation operators and attendants or relief operators and attendants was as alleged in subparagraphs (D) and (E) respectively of paragraph III of the defendant's answer to the first cause of action in the amended complaint.

3. That the facts alleged in the defendant's fourth affirmative answer and defense to the amended complaint are true.

4. That the Wage and Hour Administrator issued Interpretative Bulletin No. 13 in July of 1939, that the same was revised in October, 1939, October 1940 and November 1940, and that as revised the 6th, 7th and 8th paragraphs thereof have, ever since the said bulletin was issued, read as set out in paragraph III of defendant's fourth affirmative answer and defense to the amended complaint.

5. That the allegations of paragraph IV of defendant's fourth affirmative answer and defense to the amended complaint are true and correct.

6. That the portions of the report of the mediation panel of the National War Labor Board as set out in subparagraph (C) of Paragraph IV of defendant's fourth affirmative answer and defense to the amended complaint is a true and correct statement of said portions of said report.

7. That the third order of the National War Labor Board as set out in subparagraph (C) of paragraph IV of defendant's fourth affirmative answer and defense to the amended complaint as follows: [102]

> "3. The union's request for premium pay for resident employees of the company is denied."

is a true and correct statement of said order.

8. That the allegations of paragraph V of defendant's fourth affirmative answer and defense to the amended complaint are true and correct.

9. That the allegations of paragraph VI of defendant's fourth affirmative answer and defense to the amended complaint are true and correct.

10. That the allegations of paragraph VII of defendant's fourth affirmative answer and defense to the amended complaint are true and correct.

11. That on or about July 5, 1941, there was a radio discussion of the Fair Labor Standards Act between Mr. Mullendore, then Executive Vice-President of the defendant, and Mr. Stellern, then Southern California Manager of the Wage and Hour Division of the United States Department of Labor, during which Mr. Stellern stated to Mr. Mullendore that the United States Department of Labor had inspected the records of the defendant Company and had found the Company to be operating in "complete compliance with the Act."

Dated at Los Angeles California, this 28th day of October, 1947.

GAIL C. LARKIN
E. W. CUNNINGHAM
ROLLIN E. WOODBURY
NORMAN S. STERRY
GIBSON, DUNN & CRUTCHER
By Norman S. Sterry
Attorneys for Defendant Southern California Edison Company, Ltd. [103]

Received copy of the within Defendant's Request for Admissions this 28th day of October, 1947. David Sokol, by Elizabeth Watson, Attorney for Plaintiffs.

[Endorsed]: Filed Oct. 29, 1947. Edmund L. Smith, Clerk [104]

[Title of District Court and Cause]

ANSWER TO DEFENDANT'S REQUEST FOR ADMISSIONS

Comes now the plaintiffs and in answer to the request for admissions, allege:

I.

Deny the allegations in paragraphs 1, 2, 3, 8, 9 and 10 of defendant's request for admissions.

II.

Answering paragraph 4 of defendant's request for admissions, admit that paragraphs 6, 7, and 8 of Interpretative Bulletin No. 13 read as set out in Paragraph III of defendant's fourth affirmative defense, except that the last sentence of paragraph 6 of the bulletin should read:

> "Thus, if, over a period of several months, a telephone operator has been called upon to answer only a few calls between the hours of [105] twelve and five in the morning, a segregation of such hours from hours worked will probably be justified."

III.

Object to answering paragraphs 5, 6, and 7 of defendant's request for admissions on the ground that the same is incompetent, irrelevant, and immaterial.

IV.

Answering paragraph II of defendant's request for admissions, plaintiffs have no information, knowledge, or belief sufficient to enable them to answer said request and on said ground deny the allegations therein. Further, plaintiffs deny said allegations on the ground that the only records in the office of the Wage and Hour Administrator in Los Angeles reflect the fact that the administrator and the local office in Los Angeles have held that power companies in this area have violated the Fair Labor Standards Act by failure to pay time and a half the regular hourly rate of pay to various employees for hours spent on call for the convenience of the company in excess of forty hours per week, and have held that failure to record and pay for stand-by hours or hours on call put in generally at substations are in violation of the Fair Labor Standards Act of 1938.

DAVID SOKOL

Attorney for Plaintiffs [106]

[Verified.]

[Endorsed]: Filed Nov. 13, 1947. Edmund L. Smith, Clerk. [107]

[Title of District Court and Cause]

PLAINTIFFS' ANSWERS TO INTERROGATORIES PROPOUNDED BY DEFENDANT

Come now the plaintiffs and file their answers to the interrogatories propounded by the defendant:

General Answer and Explanation

The specific answers which follow or which have heretofore been filed, are hereby made subject to the following general answer and explanation.

Many of defendant's interrogatories refer to "active duties." What is an active duty will be a question ultimately to be determined by the Court or jury. None of the answers of the plaintiffs to any question in which the words "active duty" are used by the defendant should be construed as admitting or denying that any particular duty is active or inactive. The fact that certain duties may have expressly or impliedly described one duty [108] or another as active, is not to be construed as stating that the other duties are inactive. The duties of all of the plaintiffs included but was not limited to repairs, maintenance, operation, standby and emergencies. One of the duties for which each of the plaintiffs was engaged was to stand by.

All of the plaintiffs received a monthly or weekly salary which the defendant represented to plaintiffs covered all of the duties described including standby time. There was a contract and custom to pay for standby time, except that the defendant considered that standby time was paid by the overall monthly and weekly wage.

All specific answers regarding contract, custom, minimum and overtime, active and inactive duties, must be read subject to the above explanation and general answer.

Specific Answers

(Note: Each answer number corresponds to the interrogatory number propounded by defendant above date October 24, 1947.)

1. No, except that all activities, including standby, were alleged by the defendant to have been paid for by the monthly or weekly salary or wage plus the designated overtime.

2. See answer to 1.

3. The plaintiffs made out their own time cards under the supervision of their superiors who instructed them to put down only eight hours plus the emergency call-outs.

4. —

5. Yes.

6. —

7. No, subject to answer to 3.

8. — [109]

9. No formal demand was made although the plaintiffs continually complained about the failure of the defendant to pay such overtime. All of the plaintiffs were instructed not to turn in any record on their time cards, time sheets or other records, showing the standby time.

10. —

11. Yes, on instructions as in answer to 3.

12. —

13. No, on instructions as in answer to 3.

14. —

15. The contract was both oral and written. The part in writing set forth in Order A36, which was introduced in evidence at the pre-trial and a copy of which is in the position of the defendant. The part which was oral consisted of the actual hiring and custom and practice and representations made by the defendant to the plaintiffs to the effect that all activities, including standby, were paid for by the weekly or monthly salary and that in addition to said weekly and monthly salary plaintiffs were to receive time and a half their regular hourly rate for all overtime in excess of forty hours each work week. Such representations were made at the time of the employment of the plaintiffs and at the time that Order A.36 was issued in 1942 and revised in 1943.

16. See answer to 15.

17. See answer to 15.

18. See answer to 15.

19. See affidavit of substation operators, attendants and relief men (plaintiffs) filed in support of plaintiffs' motion for summary judgment.

20. See answer to 19.

21. See answer to 19. [110]

22. These plaintiffs were required to be on the premises of the defendant twenty-four hours each day. Normally they were in the substation proper from 8:00 A.M. to 5:00 P.M.

23. No, subject to answer to 22.

24. See answers to 22 and 23.

25. There was no understanding concerning this, except that plaintiffs were informed that they were to put down eight hours.

26. No.

27. —

28. The plaintiffs understood that their monthly or weekly salary, plus payment for emergency time, was payment for all duties and activities performed. They were to receive time and a half for all hours in excess of forty in each work week.

29. See answer to 28.

30. No.

31. —

32. Yes.

33. —

34. Yes.

35. —

Dated: January 12, 1948.

DAVID SOKOL and
PACHT, WARNE, ROSS & BERNHARD
By David Sokol
Attorneys for Plaintiffs [111]

[Affidavit of Service by Mail.]

[Endorsed]: Filed Jan. 14, 1948. Edmund L. Smith, Clerk. [112]

[Title of District Court and Cause]

ADDITIONAL ANSWERS TO DEFENDANT'S REQUEST FOR ADMISSIONS

Plaintiffs, answering defendant's request for admissions, allege:

I.

Deny the allegations in paragraph 5.

II.

Admit the allegations in paragraph 6.

III.

Admit the allegations in paragraph 7.

Dated: January 12, 1948.

DAVID SOKOL and
PACHT, WARNE, ROSS & BERNHARD

By David Sokol

Attorneys for Plaintiffs [113]

[Affidavit of Service by Mail.]

[Endorsed]: Filed Jan. 14, 1948. Edmund L. Smith, Clerk. [114]

[Title of District Court and Cause]

NOTICE OF APPLICATION FOR ORDER REQUIRING PLAINTIFFS TO ANSWER INTERROGATORIES

To: The Plaintiffs in the action above entitled, and to Messrs. Pacht, Warne, Ross & Bernhard, and to David Sokol, Esquire, their attorneys:

Take Notice that the defendant in the action above entitled will, on Tuesday, the 3rd day of February, 1948, at the hour of ten o'clock A.M., on said date, or as soon thereafter as counsel can be heard, before the Honorable Wm. C. Mathes in his Courtroom in the Federal Post Office and Court House Building, in the City of Los Angeles, State of California, under Rule 37 of the Rules of Civil Procedure for the District Courts of the United States, apply to the Court for an order requiring the plaintiffs to make definite answers to the following interrogatories, upon the ground that each of the following numbered interrogatories has actually not been [115] answered by the plaintiffs:

Interrogatories Nos. 17 and 18: The foregoing interrogatories are answered only by saying, "See answer to 15," which said answer to interrogatory 15 does not answer the said interrogatories Nos. 17 and 18.

Interrogatory No. 21: The said interrogatory is answered only by saying, "See answer to 19," which said

answer to interrogatory No. 19 does not answer the said interrogatory No. 21.

Dated: Los Angeles, California, January 28, 1948.

GAIL C. LARKIN
E. W. CUNNINGHAM
ROLLIN E. WOODBURY
NORMAN S. STERRY
GIBSON, DUNN & CRUTCHER

By Norman S. Sterry

Attorneys for Defendant Southern California Edison Company, Ltd.

Service of the within Notice of Application is acknowledge this 28th day of January, 1948.

It Is Stipulated that the notice of said application is given within a reasonable time, and that the same may be heard at the time noted, to wit, February 3, 1948.

PACHT, WARNE, ROSS & BERNHARD and DAVID SOKOL

By David Sokol

Attorneys for Plaintiffs

Order to Clerk: File.
MATHES, J.

[Endorsed]: Filed Jan. 29, 1948. Edmund L. Smith, Clerk. [116]

[Title of District Court and Cause]

ORDER ON DEFENDANT'S MOTION RE INTERROGATORIES

This cause having heretofore come before the court for hearing on defendant's motion, filed January 29, 1948, requiring plaintiffs to answer certain interrogatories, and the matter having been heard and submitted for decision;

It Is Now Ordered that the defendant's said motion be and is hereby denied.

It Is Further Ordered that the Clerk this day forward copies of this order by United States mail to the attorneys for the parties appearing in this cause.

May 17, 1948.

WM. C. MATHES
United States District Judge

[Endorsed]: Filed May 18, 1948. Edmund L. Smith, Clerk. [117]

[Title of District Court and Cause]

ORDER ON MOTIONS FOR SUMMARY JUDGMENT

This cause having heretofore come before the court for hearing on plaintiffs' motion for partial summary judgment, filed September 8, 1947, and defendant's motion for summary judgment, filed October 22, 1947; and it appearing to the court:

(a) that there is no genuine issue as to any material fact involved in determining the right to recovery in this cause;

(b) that as to each plaintiff the action is one to enforce claimed liability for failure of the defendant employer to pay overtime compensation under the Fair Labor Standards Act of 1938, as amended, [29 U.S.C. §§ 201 et seq.] with respect to certain activities engaged in by the plaintiff employees [118] prior to the effective date [May 14, 1947] of the Portal-to-Portal Act of 1947 [Public Law No. 49, chapter 52, 80th Cong., 1st sess.; 29 U.S.C. §§ 260 et seq.];

(c) That the activities in controversy for which overtime compensation is sought were not made compensable by any contract or custom or practice during the portion of the day when such activities were engaged in [See § 2(a)(b), Portal-to-Portal Act of 1947];

(d) that as to each plaintiff the minimum wage and overtime requirements of the Fair Labor Standards Act of 1938, as amended, have been fully met by the defendant employer at all times involved herein prior to May 14, 1947, if the non-compensable activities referred to in (b) and (c) above are excluded in computing worktime, as § 2(c) of the Portal-to-Portal Act of 1947 directs [cf. Armour & Co. v. Wantock, 323 U.S. 126 (1944); Skidmore v. Swift & Co., 323 U.S. 134 (1944); Tenn. Coal etc. Co. v. Muscoda Local, 321 U.S. 590 (1944)];

(e) that since this action as to each plaintiff seeks to enforce liability on account of the failure of the employer to pay overtime compensation under the Fair Labor Standards Act of 1938, as amended, "with respect to an activity which was not compensable under subsections (a) and (b)" of § 2 of the Portal-to-Portal Act of 1947, jurisdiction of this court of the subject-matter of the action is expressly withdrawn by the provisions of § 2(d) of the Portal-to-Portal Act of 1947; and

(f) that defendant is accordingly entitled, as [119] a matter of law, to a judgment dismissing this action as to each plaintiff for lack of jurisdiction of the subject-matter;

It Is Now Ordered:

(1) that the motion of plaintiffs for partial summary judgment, filed September 8, 1947, be and is hereby denied;

(2) that defendant's motion for summary judgment, filed October 22, 1947, be and is hereby granted; and

(3) counsel for defendant are directed to submit judgment dismissing this action as to each plaintiff for lack of jurisdiction of the subject-matter—and findings of fact and conclusions of law if so advised [See Rule 52(a) F.R.C.P., as amended March 19, 1948]—pursuant to local rule 7 within 10 days.

It Is Further Ordered that the Clerk this day forward copies of this order by United States mail to the attorneys for the parties appearing in this cause.

May 18, 1948.

WM. C. MATHES
United States District Judge

[Endorsed]: Filed May 18, 1948. Edmund L. Smith, Clerk. [120]

In the District Court of the United States
Southern District of California
Central Division

Civil Action No. 5544 WM

RAYMOND F. DRAKE, et al.,

Plaintiffs,

vs.

SOUTHERN CALIFORNIA EDISON COMPANY, LTD., a corporation,

Defendant.

JUDGMENT OF DISMISSAL

Plaintiffs having moved for partial summary judgment, and the defendant having moved for summary judgment against all of the said plaintiffs, the said motions came on regularly for hearing before the Honorable Wm. C. Mathes, Judge, on Tuesday, the 3rd day of February, 1948, at the hour of 10:00 o'clock A.M. Plaintiffs appeared by David Sokol, Esquire, and by Bernard Reich, Esquire, of the firm of Pacht, Warne, Ross & Bernhard, their attorneys; the defendant appeared by Norman S. Sterry, Esquire, of the firm of Gibson, Dunn & Crutcher, and Rollin E. Woodbury, Esquire, its attorneys. Said respective motions of the parties were presented to the Court upon the entire record in the case, including all affidavits and all documents received in evidence on pretrial hearings, and said motions were argued at length by the respective counsel, counsel for plain- [121] tiff contending, among other grounds, that the Portal-to-Portal Act of 1947 was unconstitutional, and the Court having carefully considered the matter and being fully advised

in the premises, and it appearing and the Court finding from the entire record (1) that there is no genuine issue as to any material fact involved affecting the right of recovery of any of the plaintiffs; (2) that as to each plaintiff the cause of action is prosecuted to enforce recovery for an alleged failure of defendant to pay overtime compensation under the Fair Labor Standards Act of 1938, as amended (29 U. S. C. Secs. 201, et seq.) for certain activities alleged to have been engaged in by each plaintiff employee prior to May 14, 1947, the effective date of the Portal-to-Portal Act of 1947, which activities were made non-compensable by subsections (a) and (b) of Sec. 2 of the Portal-to-Portal Act of 1947, unless there was an express provision of a contract to pay for such activities or they were paid for by custom or practice; (3) that the said activities for which overtime compensation is sought by each of the said plaintiffs were not made compensable by any contract or custom or practice within the purview of subsections (a) and (b) of Section 2 of the Portal-to-Portal Act of 1947; and (4) that as to each plaintiff the minimum wage requirements of the Fair Labor Standards Act of 1938 have been fully met at all times involved herein, and that the defendant has at all times complied with all overtime requirements of the Fair Labor Standards Act if the activities for which each plaintiff sues and which are expressly rendered non-compensable by subsections (a) and (b) of Section 2 of the Portal-to-Portal Act of 1947 are excluded pursuant to the provisions of subsection (c) of Section 2 of the Portal-to-Portal Act of 1947; and the Court having concluded that the Portal-to-Portal Act of 1947 is constitutional and having further concluded from the facts found by the Court as above recited that the defendant's motion

for a summary judgment herein should be granted, except that, as the record shows without controversy as [122] hereinbefore set forth, the action seeks to impose a liability upon the defendant employer as to each plaintiff for alleged activities performed by each said plaintiff prior to May 14, 1947, which said activities were not nor were any of them compensable within the purview of subsections (a) and (b) of Section 2 of the Portal-to-Portal Act of 1947, and hence, under subsection (d) of said Section 2 of the Portal-to-Portal Act of 1947, the court is without jurisdiction of the subject matter of said action;

Now, Therefore, by Virtue of the Premises and the Law, It Is Ordered, Adjudged and Decreed that this action be, and the same is, hereby dismissed as to each and all of the plaintiffs for lack of jurisdiction of the Court of the subject matter of the said action.

Dated: June 8, 1948.

WM. C. MATHES
Judge of the United States District Court

Approved as to form: David Sokol; Pacht, Warne, Ross & Bernhard, by Bernard Reich, Attorneys for Plaintiffs.

Judgment entered Jun. 8, 1948. Docketed Jun. 8, 1948, C. O. Book 51, page 182. Edmund L. Smith, Clerk, by John A. Childress, Deputy.

[Endorsed]: Filed Jun. 8, 1948. Edmund L. Smith, Clerk. [123]

[Title of District Court and Cause]

NOTICE OF APPEAL

To the Clerk of the above entitled Court, to the Defendant above named, and to its attorneys, Gibson, Dunn & Crutcher and Gail C. Larkin, Esq., E. W. Cunningham, Esq., and Rollin W. Woodbury, Esq.:

Notice is hereby given that the plaintiffs and each of them in the above entitled action hereby appeal to the Circuit Court of Appeals for the Ninth Circuit from that certain judgment entered in this action on June 8, 1948, in favor of the defendant and against the plaintiffs, and granting defendant's motion for summary judgment and dismissing the action for lack of jurisdiction, and from each and every part of the said judgment.

Dated: June 28, 1948.

DAVID SOKOL and
PACHT, WARNE, ROSS & BERNHARD.
By Bernard Reich
Attorneys for Plaintiffs [124]

[Affidavit of Service by Mail.]

[Endorsed]: Filed Jun. 29, 1948. Edmund L, Smith, Clerk. [125]

[Title of District Court and Cause]

STIPULATION

It Is Stipulated by and between the parties to the above entitled action that the defendant Southern California Edison Company, Ltd. may have to and including the 17th day of August, 1948, to file designation of additional portions of record to be included in the record on appeal in the above entitled action.

Dated: July 29, 1948.

DAVID SOKOL and
PACHT, WARNE, ROSS & BERNHARD
By B. Reich
Attorneys for plaintiffs

GAIL C. LARKIN
E. W. CUNNINGHAM
ROLLIN E. WOODBURY
GIBSON, DUNN & CRUTCHER
By Norman S. Sterry
Attorneys for Defendant Southern California Edison Company, Ltd. [130]

It is so ordered.

Dated: Aug. 2, 1948.

WM. C. MATHES
Judge, United States District Court

[Endorsed]: Filed Aug. 2, 1948. Edmund L. Smith, Clerk. [131]

[Title of District Court and Cause]

STIPULATION EXTENDING PERIOD FOR FILING AND DOCKETING RECORD ON APPEAL PURSUANT TO RULE 73(g) OF THE FEDERAL RULES OF CIVIL PROCEDURE; STIPULATION RE CONSOLIDATION ON APPEAL; ORDER

It Is Hereby Stipulated by and between the attorneys for the respective parties hereto:

1. The time for filing the record on appeal and docketing the action in the Circuit Court of Appeals for the Ninth Circuit is, subject to the approval of the Court, extended to and including September 25th, 1948.

2. The record on appeal in this and the companion case Myron E. Glenn, et al., v. Southern California Edison Company, Ltd., a corporation, Civil Action No. 4327 WM, shall be consolidated on appeal in so far as the Rules of the Circuit Court of Appeals for the Ninth Circuit permit, it being contemplated that the parties will submit a single set of briefs for both cases, and the parties here [132] again reaffirm stipulations made heretofore that all papers, documents, affidavits, depositions and any and all other matters filed in one case shall be considered on appeal with the same force and effect as if filed in the other case.

Dated: July 26th, 1948.

DAVID SOKOL and
PACHT, WARNE, ROSS & BERNHARD
By Bernard Reich
Attorneys for Plaintiffs

NORMAN S. STERRY
GIBSON, DUNN & CRUTCHER and
GAIL C. LARKIN,
E. W. CUNNINGHAM and
ROLLIN W. WOODBURY
By Norman S. Sterry
Attorneys for Defendant

It is so ordered:

Dated August 2, 1948.

WM. C. MATHES
District Judge

[Endorsed]: Filed Aug. 2, 1948. Edmund L. Smith, Clerk. [133]

[Title of District Court and Cause]

STIPULATION AND ORDER RE DESIGNATION OF RECORD ON APPEAL AND TRANSMISSION OF ORIGINAL PAPERS

Whereas, the above entitled action was brought to recover for overtime compensation, liquidated damages, and attorneys' fees, and all the issues in the said case both of fact and of law are the same as the issues in the case of Myron E. Glenn, et al., Plaintiffs, v. Southern California Edison Company, Ltd., a corporation, Defendant, Civil No. 4327 WM, hereinafter for brevity referred to as the "Glenn case," except that in the Glenn case, in addition to the classification of employee plaintiffs in the above entitled case, there are other classifications of employee plaintiffs than are involved in the above entitled case, and

Whereas, the above entitled case has at all times been consolidated with the said Glenn case for the purpose of any and all pre-trial hearings set after the filing of the above entitled case, and the hearing of all motions, including the motion of plaintiffs in both of said cases for partial summary judgment, and [130] the motions of the defendant in both said cases for summary judgment in favor of the defendant, which said motions resulted in the order of dismissal in the above entitled case herein appealed from and a similar order in the Glenn case likewise appealed from by said plaintiffs therein, and

Whereas, on the hearing of said motion by the plaintiffs in the above entitled case and the Glenn case for partial summary judgment, and the motion of the defendant in the above entitled case and in said Glenn case for summary

judgment in its favor, the said respective motions were submitted and heard upon all the files and papers in both said cases and a reporter's transcript of the proceedings on said motions and on previous pre-trial hearings was filed in the said Glenn case and not in the above entitled case, and

Whereas, as a matter of precaution the parties hereto have filed in this case identical specifications for the portions of the record to be transmitted to the appellate court, and

Whereas, the specifications by the defendant of the reporter's transcript on the pre-trial hearing on November 18, 1946, and the reporter's transcript on the proceedings on July 11, 1947, and the reporter's transcript of Argument on February 3, 1948, were filed in the said Glenn case and not in this case, and

Whereas, it is the intention of the parties, on the records in both cases being docketed in the United States Circuit Court of Appeals, to arrange, if possible, to have them set and heard together,

Now, Therefore, It Is Stipulated by and between the parties hereto:

1. That in making up the record in the above entitled case to be forwarded to the United States Circuit Court of Appeals for the Ninth Circuit the Clerk of the above entitled court need not place in the record in the above entitled case or forward to the Clerk of the said Circuit

Court of Appeals any document speci- [140] fied by either party to be included in the record of the above entitled case that has been included in the record in the said Glenn case, but as to such document the Clerk shall simply insert a paper stating the plaintiff or defendant, as the case may be, has specified the inclusion of the document, briefly describing it, with the notation, "Not included because in the record in the case of Myron E. Glenn, et al., Plaintiffs v. Southern California Edison Company, Ltd., a corporation, Defendant, Civil No. 4327-WM."

2. That any document included in the Glenn case may be considered on the appeal in the above entitled case with the same force and effect as if included in the record in the above entitled court, and that if it is necessary, the parties will, after the docketing of the appeal in the above entitled case, execute and file in the said United States Circuit Court of Appeals for the Ninth Circuit a stipulation to such effect.

3. That no wording of the designation by the plaintiffs of the record to be sent by the above entitled court to the clerk of the Circuit Court of Appeals for the Ninth Circuit shall be deemed a designation of the matter to be printed by the clerk in the United States Circuit Court of Appeals and the parties shall after the record in the above entitled court is docketed in the said Circuit Court of Appeals designate the portions of the record to be printed by the clerk of the said Circuit Court of Appeals within the time provided therefor by the rules of said court.

4. That this stipulation shall be included by the Clerk in the above entitled Court as a part of the record in the above entitled case to be transmitted to the said United States Circuit Court of Appeals for the Ninth Circuit.

Dated: Sept. 2, 1948.

DAVID SOKOL and
PACHT, WARNE, ROSS & BERNHARD
By Bernard Reich
Attorneys for Plaintiffs

GAIL C. LARKIN,
E. W. CUNNINGHAM
ROLLIN E. WOODBURY
GIBSON, DUNN & CRUTCHER
By Norman S. Sterry
Attorneys for Defendant [141]

It is so ordered:

Dated: Sept. 7, 1948.

PAUL J. McCORMICK
District Judge

[Endorsed]: Filed Sep. 7, 1948. Edmund L. Smith, Clerk. [142]

[Title of District Court and Cause]

CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the District Court of the United States for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 142, inclusive, contain full, true and correct copies of Complaint Under Fair Labor Standards Act of 1938; Notice of Motions to Dismiss and to Make the Complaint More Definite and Certain and to Strike Portions of the Complaint; Order Dated November 29, 1946; Answer; Supplemental Answer; Request for Admission of Facts Under Rule 36 of the Federal Rules of Civil Procedure; Motion to Dismiss; Notice of Hearing on Defendant's Motion to Dismiss; Defendant's Response to Request for Admission of Facts Under Rule 36 of the Rules of Civil Procedure; Stipulation and Order re Answers to Request for Admissions; Order re Motion to Dismiss; Amended Complaint Under the Fair Labor Standards Act of 1938 and the Portal-to-Portal Act of 1947; Stipulation and Order Dated September 8, 1947; Stipulation and Order Dated September 16, 1947; Answer to Amended Complaint; Demand for Jury Trial; Motion for Summary Judgment; Notice of Motion for Summary Judgment; Interrogatories Propounded by Defendant to Plaintiffs; Defendant's Request for Admissions; Answer to Defendant's Request for Admissions; Plaintiffs' Answers to Interrogatories propounded by Defendant; Additional Answers to Defendant's Request for Admissions;

Notice of Application for Order Requiring Plaintiffs to Answer Interrogatories; Order on Defendant's Motion re Interrogatories; Order on Motions for Summary Judgment; Judgment of Dismissal; Notice of Appeal; Statement of Points and Designation of Record; Stipulation and Order re Appellee's Designation; Stipulation and Order Extending Time to Docket Appeal; Defendant's Designation of Additional Portions of Record and Stipulation and Order re Designation of Record on Appeal and Transmission of Original Papers which, together with the reporter's transcripts, exhibits, depositions and other documents certified as a portion of the record in the case of Myron E. Glenn, et al. vs. Southern California Edison Company, Ltd., No. 4327-WM-Civil which are also applicable in this case, transmitted herewith, constitute the record on appeal to the United States Court of Appeals for the Ninth Circuit.

I further certify that my fees for preparing, comparing, correcting and certifying the foregoing record amount to $35.00 which sum has been paid to me by appellants.

Witness my hand and the seal of said District Court this 21 day of October, A.D. 1948.

(Seal) EDMUND L. SMITH

Clerk

By Theodore Hocke

Chief Deputy

In the District Court of the United States in and for the Southern District of California
Central Division.

Honorable William C. Mathes, Judge Presiding.

No. 5544-WM-Civil

RAYMOND F. DRAKE, W. W. BENNETT, F. V. BRIMMER, HAROLD E. COLLINS, and other employees similarly situated,

Plaintiffs,

vs.

SOUTHERN CALIFORNIA EDISON COMPANY, LTD., a corporation,

Defendant.

Consolidated for trial with:
No. 4327-WM-Civil

MYRON E. GLENN, et al.,

Plaintiffs,

vs.

SOUTHERN CALIFORNIA EDISON COMPANY, LTD., a corporation,

Defendant.

REPORTER'S TRANSCRIPT OF PROCEEDINGS ON PRE-TRIAL

Los Angeles, California,
Monday, November 18, 1946.

Appearances:

For the Plaintiffs: David Sokol, Esq.

For the Defendant: Norman S. Sterry, Esq., Rollin E. Woodbury, Esq.

Los Angeles, California, Monday, November 18, 1946
10:00 A. M.

(Following the disposition of various motions, not transcribed, the following proceedings were had on pre-trial hearing):

Mr. Sterry: Mr. Lyon, will you take the stand, please?

ROBERT LYON,

called as a witness by defendant, being first sworn, was examined and testified as follows:

The Clerk: Please state your name.

The Witness: Robert Lyon.

The Clerk—L-y-o-n?

The Witness: That is right.

Direct Examination

By Mr. Sterry:

Mr. Sterry: Mr. Reporter, I think that we will want a copy of the testimony that is taken here.

Mr. Sokol: And the plaintiffs, as well.

The Court: Gentlemen, that raises a question which I ordinarily raise at the outset of pre-trial hearings, and that is whether the parties stipulate that the record made upon the pre-trial hearing may be deemed a part of the record upon the trial. [4*]

Mr. Sokol: So stipulated.

Mr. Sterry: I will so stipulate, if it is not so as a matter of law.

The Court: I had assumed that probably it would be as a matter of law.

*Page number appearing in original Reporter's Transcript.

(Testimony of Robert Lyon)

Mr. Sterry: Well, whether it is or not, we stipulate that this may be deemed a part of the record hearing and be treated with the same force and effect as though given at the trial. And I will say this, if your Honor please: That we will expect to have available at the trial all these men who made these schedules, for further statement, but it is a long time off. Suppose some of them should die, we might be hard put to it to make a foundation.

The Court: The clerk here has a form of a stipulation which he might pass to you gentlemen with respect to the record.

Q. By Mr. Sterry: Mr. Lyon, you are employed by the defendant, Southern California Edison Company?

A. Yes; I am.

Q. And in what capacity?

A. At the present time I am a substation operator.

Q. How long have you been such, Mr. Lyon?

A. How long have I been in that classification?

Q. Yes.

A. I have been in substations about three and one-half [5] years, a little more than three and one-half.

Q. You have operated a number of substations, one-man substations, and also at the two-men substations?

A. That is right.

Mr. Sterry: Mr. Sokol, you will not make any claim that there is any basis for any claim of overtime at the three-men stations, will you?

Mr. Sokol: I prefer withholding any stipulation.

Mr. Sterry: Well, all right.

Q. In any event, Mr. Lyon, you worked at both one and two-men substations? A. That is right.

(Testimony of Robert Lyon)

Q. And quite a number of them?

A. Yes. Only one two-man substation, however.

Q. Mr. Lyon, at the request of your superiors, and that coming from the law department, you made a summary of the logs of various employees, did you not?

A. That is right.

Q. Of substation operators, some of whom were at two-men stations and some at one?

A. That is right.

Q. You had nothing to do with the selection of the logs that you made? A. No; I did not.

Q. After you made them, after you made your first [6] batch, you made some further ones? A. Yes.

Q. But you were not present at any conference between Mr. Sokol, here representing the plaintiffs, and ourselves? A. No.

Q. You only know, then, by hearsay that he requested certain others and the counsel for the defendant asked for certain others? A. That is right.

Q. Or, rather, not counsel—the substation operators, the head of that department, selected others for you to make? A. Yes.

Q. Is that correct? A. Yes.

Mr. Sterry: I now, Mr. Sokol, will give you a list of all those that have been made.

Q. Have you checked this list against those you made?

A. I do not believe that particular one; no.

Mr. Sterry: That has been checked by someone else. I am told, if your Honor please, that this is a list of the logs made, showing the times; and I will offer it into evidence with the logs merely for the purposes of convenience of court and counsel.

(Testimony of Robert Lyon)

The Court: You offer the list?

Mr. Sterry: I am going to offer the logs as soon as— [7]

Mr. Sokol: No objection to the list going in.

The Court: The list will be received into evidence as Defendant's Exhibit—is this our first exhibit?

The Clerk: Yes, your Honor.

Mr. Sterry: This is your first exhibit.

The Court: Defendant's Exhibit A.

Q. By Mr. Sterry: Now, Mr. Lyon, will you take Mr. Andersen's just as a sample and explain to the court how you made that break-down and the classification? In other words, I want his Honor to know just how you prepared that. Maybe you had better show it to his Honor. Have we got a copy there?

A. Yes. These forms were previously prepared, the information requested. I took the log records and got this information from them, compiled it. I also used the record of "time worked" from the time sheets that the men fill out themselves. These are two sections, two separate sections. This material is the log section and this is the time sheet section. I have over here—

The Court: The log section is to the left?

The Witness: That is right.

The Court: To the left of what?

The Witness: This line ends here, this lower line ends, and then the new one begins over here for a new heading.

The Court: There are two parts, then, the part under- [8] neath the long line over which is written "Log Record" is one part?

The Witness: Yes.

(Testimony of Robert Lyon)

The Court: And the part to the right over the portion headed "Record Of Time From Time Reports" and "Remarks" is another part?

The Witness: That is right. And this "Remarks" column at the very extreme right hand may apply to either the log record or the time sheets as they follow through on the same day.

Mr. Sterry: Yes. Go ahead.

A. In preparing these sheets, of course, I got the "Location" and the "Date", the date that the material was taken from out of the log.

Now, the next heading, "Inspected Station (No. of Times)", I looked down through all the entries on that day and found out how many times he said in the log that he had inspected the station, in the body of the log.

"Reported to Switching Center (No. of Times)", I used the same method, and also got that—arrived at the decision as to whether or not he had reported to the switching center by noting that the switching center operator's name was posted in the log opposite Andersen's name, showing that he had okayed in on the telephone. Those did not just apply to home calls, incidentally; they referred to all calls to the switching [9] center, all reports.

"Put Street Lights on (Time)": And this gives the time of day that they were put on. He has none in the station at that particular station.

"Switching Elapsed Time": I show two types of figures broken down in hour or more entries. The "E" indicates my own estimate of time over and above the starred time. The starred time is time which is indicated directly by log entries showing definite starting and stopping time

(Testimony of Robert Lyon)

of switching. And, for instance, this 3 hours and 13 minutes can be a composite of several starting and stopping times blocked together.

The Court: What does that mean, "Switching"?

The Witness: "Switching" is the work that is done in the substation to clear a piece of apparatus for work, or a line for work, or emergency switching to preserve the continuity of the flow of power to the consumers.

The Court: It is station work, is it?

The Witness: Yes.

The Court: Inside the station?

The Witness: That is right.

Now, in these other smaller figures, since they are under an hour, they may or may not be either entirely estimated time or entirely actual time, as shown by records, or a combination of both, but they were not broken down since they were under [10] 1 hour.

"Additional Log Entries": If anything was not covered in these other entries, I showed how many additional log entries he had made that day other than these covered in these other columns, and the time of the first entry in the morning and the last entry in the afternoon or evening.

The Court: That completes your recapitulation of the "log record"?

The Witness: Of the log, yes. Now, on the time sheets I took the same day.

The Court: Does this workman make both the log record and the time sheet?

The Witness: Yes; he signs his name. Anything he did not sign his name to I did not take as factual, because

(Testimony of Robert Lyon)

I did not know whether that was his writing or not. But the standard policy is always to sign your name after anything you put in the log.

The Court: As to these recapitulations you have made, you have taken this information from the log record prepared by the employee affected and from the time reports?

The Witness: That is right.

The Court: Prepared by him, also?

The Witness: That is right.

Mr. Sterry: May I interrupt, if your Honor please?

The Court: Yes. [11]

Mr. Sterry: To say that by understanding is that each one of these employees, all the employees, turn in a daily time report and then a weekly time card.

The Court: And kept a log in addition thereto?

Mr. Sterry: Well, the log is kept by the fellow running the substation. Now, when you say "keep a log," that would apply only to substation men. It does not apply to a lot other of these plaintiffs.

The Court: There is only one log kept, I take it, at each station, and there might be 3 or 4 or a dozen employees at the station?

Mr. Sterry: Yes; that is correct.

The Court: And they would all be making entries in this log?

The Witness: That is right.

Shall I continue with this? Under "Description Labor Operations" it shows "Regular day off" in the man's own writing, because he filled these slips out, and from his regular days off, whether or not he was operating, and

(Testimony of Robert Lyon)

sometimes they showed, if they had any unusual work, they showed what that was, also, because it had to be distributed to different accounts. Incidentally, in this "Description of Labor Operations", in some cases, I standardized on my own initiative to clarify the thing. For instance, some man would show a day off to indicate whether or not he was taking [12] that day off on his own time or whether it was a regular day off. I showed that it was a regular day off unless otherwise shown.

That is about the only place where I had to show a definite wording to distinguish his own from the other.

The Court: If he took a day off regularly how did you note that?

The Witness: As "regular day off", and if it was "day off" on his own time, I distinguished "day off—own time", I believe, as I recall. That happened, I don't believe, more than 2 or 3 times in the whole.

The Court: You mean taking time off on their own time?

The Witness: On their own time; yes.

Down at the bottom where it says: "30 Day Mo. 7 Days off" and the monthly rate, etc., that is taken directly from the monthly time sheet which is a recap of the daily or weekly time sheets. That is this little block at the bottom here, this block here (Indicating to the court.).

The Court: That is as far as the time concerned is taken?

The Witness: That is right.

The Court: The monthly rate and the payments are taken from some other records?

(Testimony of Robert Lyon)

The Witness: Yes. With these time sheets they would run along for 30 days, or whatever the month was, and then [13] there would be a monthly summary following that, which he also made out; and that information there is taken from that monthly time sheet.

Then this other little notation here: "Hours shown for each day worked excluding overtime is 8 hours", that saved our putting another column on the page. These men all put down, as a regular practice, that showed 8 hours on their time slip for the day, and there was no variation from that unless the man got sick and went home and only worked 4 hours, and in those cases that was noted. So, to save a column, this notation is made here.

Aside from that, I can't think of anything else unless somebody wants to ask.

Mr. Sterry: I think that is all. Any questions, Mr. Sokol?

Mr. Sokol: I have a few questions.

Mr. Sterry: Let me just make one explanation, if your Honor please. At the time of trial, I think we will show that originally it averaged the same time about the hours shown; some cards did not show any and some showed others. But I think for the entire period involved a man always showed 8 hours. How much he worked will be a subject of proof, but that was put on there rather than run a column, just as Mr. Lyon stated. Unless he was sick or something, it averaged? That is true, isn't it? [14]

The Witness: Yes, sir.

(Testimony of Robert Lyon)

The Court: These recapitulations are in effect admissions by these employees as far as their records are concerned?

Mr. Sterry: No. The effect of them is a matter that I am not prepared to say at the moment. It is going to be an issue of fact at the trial, and you just could not meet it at the pre-trial hearing. One of the issues of fact will be as to what the actual duties were. You see, the plaintiffs are claiming that, as long as they could not leave the premises, they were on for 16 hours. We claim they were not on any, and that it was tacitly agreed that they had so few active duties that it was equivalent to 8 hours of active duty.

The Court: Out of 24?

Mr. Sterry: Out of 24. Now, that is going to involve not only questions of law but questions of fact on which there will be a great deal of dispute. But the log entries—it is impracticable to bring those logs. If you were caused to bring all the logs, you would not only put the station out by taking their records, but you would have to have a truck-load in here; and we have made this summary so that you could run down here. For instance, a part of this is made to show that, for instance, on a certain day a man made 7 switches and it took so long; another day, another; to give you a sort of composite idea.

There will be a great deal of conflict of testimony as [15] to how much actual time was taken up in actual services. As your Honor developed from Mr. Lyon, a man does anything, he is supposed to put it in the log. If we tried to examine all the logs involved, a month would not even be a starter; and I have asked Mr. Sokol if he would not agree that these were typical; and he says he

(Testimony of Robert Lyon)

does not want to stipulate to anything, but I think, at the proper time, we will try and show that we tried to pick out what would be representative. But it is more to represent the actual time and the actual number of concrete services that they did.

Whether it is an admission or not, without starting, again, arguments of questions of law that your Honor has, but we saved the Statute of Limitations, and I think your Honor will remember that I have said that I do not think you can have an estoppel within the strict sense. But I do think it is the law that where a man keeps his own time and he says to an employer, "I had 6 hours of overtime," that he is estopped to come in later and say that he had 12 hours, be cause I think the employer has a right to rely on that. To that extent, as to what they did, this may be an admission against their interests, but I am not offering it as an admission of either party, but to give the court and all counsel a sort of an actual reflection, in as brief a way as possible, of what these logs show.

The Court: A summary of the company's records? [16]

Mr. Sterry: Well, it is the company's records and it is the men's records. It is what each showed as their actual services.

Mr. Sokol: May I inquire?

The Court: Had you finished, Mr. Sterry?

Mr. Sterry: Yes.

Cross-Examination

By Mr. Sokol:

Q. Mr. Lyon, going to your last statement there, regularly the men put down 8 hours a day on their weekly time report, is that right? A. That is right.

(Testimony of Robert Lyon)

Q. Incidentally, was "8 hours" printed on the time report, or did they write it in in pencil or otherwise?

A. That was written in several places in pencil.

Q. In pencil? A. Yes.

Q. That was on the time report. Now, in the station proper there is a log book, is that right? A. Yes.

Q. And that is kept in the station?

A. That is right.

Q. Adjoining or somewhere in the vicinity of the station is the home of the employees, is that right? [17]

A. Yes.

Q. The log book is not kept at the home?

A. No.

Q. The hours recorded in the log book are those hours which the first and last entries appear in the log book when he went over to the station? A. Yes.

Q. Although he only put "8 hours" on his weekly time report for his daily work, the log entries do show frequently more than an 8-hour lapse between the first and last entry, is that right? A. Well, they varied.

Q. Well, they speak for themselves.

A. I couldn't say. Yes.

Q. You do not have to answer that, because what you have here shows what the fact is. Perhaps I was not following it too closely. With respect to the columns, which are the ones reflected in the log books, starting with the left here, the name of the Station?

A. The name of the Station.

Q. That is on the log book. And then the "Date": What is that, date of what, date of the log entry?

A. The date of the log entry; yes.

(Testimony of Robert Lyon)

Q. Then that is in the log book. Next, "Inspected Station (No. of Times)," is that in the log book? [18]

A. Yes. In his own writing he says that he inspected the station.

Q. I see. Then, "Reported to Switching Center," is that in the log book?

A. Yes. It is considering that when he switches, standard practice is to call—or other things also—standard practice is to call the switching center, and although it doesn't say in so many words that he called the switching center, the switching center man's name is put in opposite the operator's name, indicating that he did call him.

Q. Yes, I see. Well, that follows. Then I do not have to go through the rest of these. Then, from this column over toward the right where you have the "Date" under "Record of Time From Time Reports"—

A. Yes.

Q. —that is the date that you got from the weekly time report or daily?

A. Daily or weekly. On the weekly.

Q. It appears it was daily here.

A. Well, you couldn't tell from this, because on the weekly time sheets there are blanks, no dates filled in, and the man fills in the date and then puts in underneath that so many hours he worked.

Q. I see. But it was always 8?

A. Well, it was the general practice; yes. [19]

Q. But these "Remarks" over here on the extreme right, for instance, Andersen "(Includes wiping bushings & insulators." Where do you find that?

A. Well, that could have been either in the log or on the time sheet.

(Testimony of Robert Lyon)

Q. You do not recall just now?

A. Well, I couldn't, because this column applies to both. Some of the men were in the habit of entering that information on the time sheets and some were not; but it was picked up from one or the other.

Q. You state that that type of remark would have to be put down for allocation of work time of various towns, or something like that? A. I beg your pardon?

Q. What did you mean by that?

A. Oh, no; various accounts.

Q. Various accounts? A. Yes.

Q. Why would that be necessary?

A. Well, if there are certain minimums of time, if a man spent so much time doing a certain job on a day over a minimum amount of time, he should charge that time to some account which applies, if it is something a little out of ordinary from the daily routine.

Q. Do I understand you, then, that the company's books [20] are kept on that basis, that a man's time is accounted to "production" or "maintenance"; is that what you mean?

A. It can be put in that way if he spends enough time that day to show it; yes.

Q. Now, you did not take every log book of all these plaintiffs; you just took those that are listed in Defendant's Exhibit 1?

The Court: A.

The Witness: Would you say that again?

Mr. Sokol: Will you read it?

Mr. Sterry: I think your question is a little ambiguous. What you mean is—

Mr. Sokol: Well, I will re-word it.

(Testimony of Robert Lyon)

Q. The only log books that you went through are those of the persons named in Exhibit A, Defendant's Exhibit A? A. Well, I haven't seen this exhibit.

Mr. Sokol: That is correct, isn't it, Mr. Sterry?

Mr. Sterry: That is correct. I will stipulate to that.

Q. By Mr. Sokol: Then, with respect to that, you did not check all of the log books for all of their employment, did you, for the entire period of their employment?

A. Of these men, you mean?

Q. Yes.

A. All the log books for the entire period of their employment? [21]

Q. Yes. A. No.

Mr. Sterry: Only as shown by that.

Mr. Sokol: Only as shown by this.

The Court: Exhibit A shows the dates, shows the period covered, does it not?

Mr. Sterry: Yes.

Q. By Mr. Sokol: You worked in the substations yourself? A. Yes.

Q. You take in the case of a relief man, is it correct that he goes from one station to another, relieving the employee at that particular station?

A. Usually, yes.

Q. And he remains on the premises 24 hours?

A. The relief man?

Q. Where it was required?

A. Where it was required; yes.

Q. In the case of a relief man you did not check any of those logs; you would have to go through the logs of each and every station? A. That is right.

Q. Does he make log entries? A. Oh, yes, yes.

(Testimony of Robert Lyon)

Q. Which classifications of substation employees make [22] log entries? We have the relief men.

A. Well—

Q. Do you have your chief station attendant—does he make log entries?

A. You mean in attendant substations?

Q. That is right.

A. Yes; the operator on shift is generally the man who makes the log entries; and if he is a relief operator, when he gets to a station and takes over, he now becomes the operator.

Mr. Sokol: That is all.

Mr. Sterry: Mr. Sokol, you will stipulate, will you not, that we had a summary of these logs made? After we had them, you met with us in the conference room at the Edison Building; we showed them to you and you asked us to make the summary of logs of certain plaintiffs, which we did, and then we made additional ones ourselves; that is correct?

Mr. Sokol: Yes. The only reason I could not stipulate that these are fair representation is that I do not know. It is rather a vast picture and I would not care to stipulate to something that I am not certain about.

Mr. Sterry: I expect at the proper time to show that, so far as we are able to judge, it is. But if you do not want to stipulate, that is counsel's privilege.

Mr. Sokol: Well, I will investigate it further. [23]

(Testimony of Robert Lyon)

Redirect Examination

By Mr. Sterry:

Q. May I ask this, Mr. Lyon: I think this will make it clearer so the court will understand it. There are in these log entries certain times that you can get definitely, that is where a man indicates that he started switching at 11:00 o'clock and concluded at 1:00; that is a two-hour block; and then there are others where he just says: "Pulled a certain switch," and you have to estimate it from your knowledge of operating as to about how long that would take him, is that correct?

A. That is right. The starred figure is the amount of time which has those definite starting and stopping times; and the figure with the "E" after it, the "E" indicates my estimate of time over and above the time indicated by definite entries.

Mr. Sterry: That is all, Mr. Lyon.

If your Honor please, you asked me a question with reference to these notations of 8 hours, about offering them as an admission of the plaintiffs, and I said, "No." I still say that this was not gotten as an admission of any party, but to show the records. But I do not want to be precluded from the legal effect of anything that they did, any more than Mr. Sokol is by ours. So, in making those, that is one of the factors we rely on.

The Court: Are you offering into evidence now all of the [24] sheets for all purposes?

Mr. Sterry: Now I am offering into evidence all of the sheets of the men listed in Exhibit B (A) for any and all purposes.

The Court: Exhibit A.

Mr. Sterry: As Exhibit A.

The Court: The list is Exhibit A.

Mr. Sterry: The list is Exhibit A. And if I said "B", I mis-spoke myself, as I often do.

I am now offering the "Recapitulation of Station Logs" of various employees, as shown in our Exhibit A.

The Court: Is there objection?

Mr. Sokol: No objection.

The Court: Very well; the documents offered will be received into evidence and will be marked, respectively, Exhibit B on through.

Mr. Sterry: There will be an awful number of them. Let me see and check on that. There are 2, 4, 6, 8, 10. 12, 14, 16, 18—there are 18 of them.

The Court: Mr. Clerk, mark the first one listed, I mean the first set of sheets, the first set of recapitulations just offered, Exhibit B, and the first one that appears on Exhibit A—what is that name?

Mr. Sterry: That is Mr. Andersen, H. L.

The Court: H. L. Andersen. [25]

Mr. Sterry: May I make a suggestion?

The Court: Yes, sir.

Mr. Sterry: That these should be numbered as A-1, -2, -3, etc., Exhibit A-1, A-2, etc.

The Court: Would it not be desirable to sub-number each one of those sheets?

Mr. Sterry: That is what I thought.

The Court: That is the reason I thought it might be advisable to have a different letter, as long as you will have sub-numbers under each letter. Don't you think so?

Mr. Sterry: Yes. Well, just whichever your Honor thinks is better.

The Court: The Andersen set of sheets will be Exhibit B. And may we have that list, Mr. Clerk? The sheets involving H. L. Andersen will be Exhibit B. That consists of 12 sheets and each page will be sub-numbered; the top one will be B-1, to B-12.

The next, H. A. Boynton, will be Exhibit C, and there are 5 sheets and they will be sub-numbered C-1 to C-5.

A. K. Dickerson, those sheets will comprise Exhibit D; there are 4 sheets and they will be sub-numbered accordingly.

The sheets involving M. M. Edgerton will comprise Exhibit E, and there are 13 sheets; those will be sub-numbered accordingly.

The sheets involving E. L. Ellingford will become [26] Exhibit F, and there are 26 sheets which will be sub-numbered accordingly.

The sheets involving C. R. Frazier will comprise Exhibit G; there are 12 sheets and they will be sub-numbered.

The sheets involving P. G. Hanlon will comprise Exhibit H; there are 12 sheets and they will be sub-numbered accordingly.

The sheets involving O. G. Horne will comprise Defendant's Exhibit I, and there are 6 sheets which will be sub-numbered.

The sheets involving W. S. Hostetler will comprise Defendant's Exhibit J, and there are 12 sheets which will be sub-numbered accordingly.

The sheets involving Frank Johnson will be marked Defendant's Exhibit K, and there are 12 sheets which will be sub-numbered accordingly.

The sheets involving H. S. Kaneen will comprise Defendant's Exhibit L, and there are 12 sheets which will be sub-numbered accordingly.

The sheets involving G. F. Larsen will comprise Defendant's Exhibit M, and there are 6 sheets which will be sub-numbered accordingly.

The sheets involving H. E. Mayes will comprise Defendant's Exhibit N; there are 12 sheets which will be sub-numbered accordingly.

The sheets involving B. E. Moses will comprise Defen-
[27] dant's Exhibit O; there are 4 sheets which will be sub-numbered accordingly.

The sheets involving G. W. Stark will comprise Defendant's Exhibit P; there are 36 sheets which will be sub-numbered accordingly.

The sheets involving E. N. Sweitzer will comprise Defendant's Exhibit Q; there are 11 sheets which will be sub-numbered accordingly.

The sheets involving A. Tregoning will comprise defendant's Exhibit R; there are 12 sheets which will be sub-numbered accordingly.

The sheets involving V. V. B. Wert will comprise Defendant's Exhibit S, and there are 6 sheets which will be sub-numbered accordingly.

All are received in evidence.

Mr. Sterry: Mr. Kelly, will you take the stand?

JOHN FRANCIS KELLY, JR.,

called as a witness by defendant, being first sworn, was examined and testified as follows:

The Clerk: Please state your name.

The Witness: John Francis Kelly, Jr.

Direct Examination

By Mr. Sterry: [28]

Q. Mr. Kelly, what is your name?

A. John Francis Kelly, Jr.

Q. And where do you live, Mr. Kelly?

A. In Artesia, California.

Q. And you are employed by the defendant, Southern California Edison Company? A. Yes, sir.

Q. What department are you working for?

A. In the operating department, substation division.

Q. Did you at the direction of your superiors in that department take the time sheets of all of the plaintiffs and interveners in the Glenn case, and later, those in the Drake case and, for the purpose of making a recapitulation or schedule showing what we have denominated "call-out time"? A. Yes.

Mr. Sterry: I do not want to put these in evidence at this time, the forms have varied, but I am just reserving the right of offering them later, or photostatic copies or samples later. I think counsel is familiar with these.

Q. Will you show the court, just as a sample, what I show of the time cards, the weekly and monthly cards, to show how you make these computations?

A. Your Honor, here are the time sheets. This is a sample of the daily time report. This one is dated March 4, 1942, and shows "operating 8 hours", and is charged to

(Testimony of John Francis Kelly, Jr.)

the [29] proper account. That is at the Station Carpenteria.

The Court: Is that made by the employee?

The Witness: This is made by the individual employee. And this proceeds to an office, a centrally located office, where it is transcribed monthly 100.

The Court: In other words, the individual employee makes out this daily time report which you have shown me?

The Witness: And signs here, your Honor.

The Court: And signs it; and that is sent in to some office where the information appearing on the daily time report is posted onto a monthly time sheet?

The Witness: Yes.

Mr. Sokol: You said "100". Is that Edison Form 100?

The Witness: Yes; that is Edison Form 100.

The Court: Very well. And what is the next step in the process?

The Witness: This time is carefully analyzed as to accounts and hours and description. These, as you will notice, are all "8 hours". That means 8 hours all the time; and his regularly scheduled days off are noted on each sheet. That has to coincide with the free schedule for the entire month for each individual man.

The Court: What is this weekly time sheet that appears here?

The Witness: Now, this weekly time sheet is in respect [30] to the daily, used in the same manner except by the week. In other words, his daily time is entered under a daily date and the number of hours at his normal time rate, plus any overtime for call-outs which he has had is entered on the same sheet.

(Testimony of John Francis Kelly, Jr.)

The Court: Does the same person or the same office that posts the daily to the monthly also post it to the weekly time sheets?

The Witness: Yes. And the men—

Mr. Sokol: I think I had better correct you there. I do not think you are entirely correct. Isn't the weekly gotten up by the employee himself?

Mr. Sterry: That was my understanding.

Mr. Sokol: It is immaterial to me.

The Witness: If there has been a mistake made here, it has been uintentional, I assure you. The weekly is prepared by the employee, and we were discussing the transcription of the weeklies onto the monthlies.

The Court: Probably I misled you there. But the individual employee makes both the daily and the weekly?

The Witness: Yes.

The Court: And the information shown on both of them is posted to the monthly time sheets, the Form 100 which you have identified, is that correct?

The Witness: Yes, sir. [31]

The Court: Posted by someone else in the regular posting?

The Witness: Usually somebody assigned to be a timekeeper, and they are usually initialed by the timekeeper as a matter of record.

Mr. Sokol: Just one question.

The Court: Is the employee paid on this basis?

The Witness: The employee is paid on his monthly and overtime hourly rate.

The Court: Are these records used in computing his pay, too?

The Witness: Yes.

(Testimony of John Francis Kelly, Jr.)

The Court: As part of the payroll records?

The Witness: Yes.

Mr. Sterry: Now, my understanding is, if your Honor please, that during the time involved the monthly time sheet was made during a large part in the field, but not by the employee himself. They are now made, as I understand, in accordance with Mr. Kelly's testimony, in the office now, but part of it, I think, is in the field. I do not think that is material.

The Court: The original entries are daily and weekly?

Mr. Sterry: The original entries from which that is taken, made by him daily and weekly, are made by the man himself and turned in. At the time of the trial I shall want to introduce those. I do not want to introduce them now. They [32] are part of the original accounting records. I simply brought them here for two purposes: To show the court the character of them from which these compilations were made, and to enable counsel to cross examine with reference to that. May I state this, if your Honor please—and I am not stating it as evidence, of course, which is improper for counsel to do, but in explanation: Some depositions have been taken and from them the claim has been made that the sleep was continually interrupted by these numerous call-outs, and the primary purpose, although the sheets will be offered for any and all purposes fully, not limited—the primary purpose was to show the approximate amount of so-called

(Testimony of John Francis Kelly, Jr.)

"call-out time". Now, "call-out time" does not necessarily mean that of a man's overtime. For instance, during the period that Southern California was declared to be a critical labor shortage and the Government required 6 days a week, for which he was paid overtime on the basis of 8 hours, that obviously is not "call-out time".

The Court: You paid him time and a half for Saturday, for the 6th day?

Mr. Sterry: Paid him time and a half for the 6th day, but that is obviously overtime which, if he is entitled to recover, we are entitled to credit for; but it obviously is not "call-out time."

Also, there were certain regularly scheduled operations [33] which occurred, which was not emergency work, as, for example, where a man, after regular scheduled hours, was required to turn the lights on and take about 5 or 10 minutes, and they were allowed to accumulate that during the week and turn that in; that obviously isn't "call-out time".

Mr. Sokol: Well, you see, we differ on that, Mr. Sterry, on some of that.

Mr. Sterry: I don't think you differ that it is not a call-out. My idea of a call-out is something where a man is called without knowing it. In any event, what I am trying to state to the court, where it was a regular thing that he was expected to do and he was given overtime, that was not attempted to be shown.

(Testimony of John Francis Kelly, Jr.)

Then at certain non-shift stations, there were certain of the stations, they took trouble calls and, of course, that would take a very short space of time, that is one call, maybe a minute or 2 or 3 minutes, and they were allowed to accumulate the calls during the week and put them all in at one time.

That is correct, isn't it, Mr. Kelly?

The Witness: Yes.

Mr. Sokol: No; I don't think that he could testify to that, Mr. Sterry. I would have to object to that, that they accumulated those calls.

Mr. Sterry: No; it was a company practice, Mr. Sokol, [34] to allow a man who was required to respond to telephones, instead of putting them down each day, to accumulate them during the week.

Mr. Sokol: You and I have agreed that the company practice was so diverse, depending upon the division that the man was working in, that whether or not he was allowed overtime for that time is to be determined by the facts. As a matter of fact, that is not correct, Mr. Sterry.

Mr. Sterry: Well, you and I are in disagreement, then, and that will have to be a matter of proof. But, however, we did not.

Q. However, we did not put into this any overtime where it was shown it was an accumulation of telephone calls, is that correct, Mr. Kelly?

(Testimony of John Francis Kelly, Jr.)

The Witness: Would you repeat that question, Mr. Sterry?

Mr. Sterry: Read it to him, Mr. Reporter.

(Question read by the reporter.)

The Court: And by "it" what do you mean, Mr. Sterry? Are you referring to these large sheets?

The Witness: Do you mean the recapitulation there?

The Court: Yes.

Mr. Sterry: Yes. How did you show those?

A. Accumulated time of that nature was so designated as "T" time.

Q. Was "T" time? [35]

A. Those sheets which have foot-notes have accumulated time.

Q. Then at certain non-shift substations the operators on their time reports for special types of switching operations occurring with both seasonal and weekly irregularities were allowed to accumulate. Did you put that on as "call-out time"? A. Yes.

Mr. Sokol: Did you hear the question?

The Witness: I believe I understood it.

Q. By Mr. Sterry: I have here a notation which I understand was furnished you:

> "At certain non-shift substations the operators on their time reports for special types of switching op-

(Testimony of John Francis Kelly, Jr.)

erations occurring with both seasonal and weekly irregularity, accumulated their overtime for such operations into a single total figure, but reflected the days on which such operations occurred during the week. The summary reflects the call-out on each day thus designated and the amount of time shown on the summary for each such day represents an average of the total figure accumulated on the employee's time report. All of such time is of course reflected in the column 'Total Hours Call-Out Overtime', and each such call-out as designated on the employee's time report is reflected on the summary." [36]

Is that correct? A. Yes.

The Court: Will you be able to complete this morning, Mr. Sterry?

Mr. Sterry: I do not think so, if your Honor please.

The Court: Would you like to resume, gentlemen, at 1:30?

Mr. Sokol: At 1:30? I would prefer that. I have to leave the city this afternoon.

Mr. Sterry: I can be here at 1:30.

The Court: Very well; let us take a recess at this time. You may step down, Mr. Kelly. Court will recess at this time until 1:30.

(Whereupon a recess was taken until 1:30 o'clock of the same day, Monday, November 18, 1946.) [37]

Los Angeles, California, Monday, November 18, 1946.
1:30 P. M.

Mr. Sterry: Mr. Kelly, will you resume the stand?

JOHN FRANCIS KELLY, JR. (Recalled).

Direct Examination (Resumed).

Mr. Sterry: If your Honor please, I think I got into a little difficulty by trying to short-cut these various exceptions. When these schedules I am about to introduce were made up, trying to show the call-out time—and again, that is my personal idea—"call-out time" is to show some time where the man has been called out to perform some service beyond what might be called the normal working time. I think we designated it in the answer as the "night time" which, I think, is all right where you use the phrase as a designation. Perhaps it is not a happy one, because it does involve some daytime hours; and also, in as far-flung a system as this there will probably be different schedules for normal working hours.

But however that may be, it is not a thing to show the overtime, but what I would denominate was "call-out times." In order to do that there was made up and transmitted to Mr. Sokol 4 exceptions. I can either read them into the record or show them to the witness and ask him if they are [38] correct, and have it marked as a summary.

Mr. Sokol: That is agreeable to me.

The Court: Why not show it to the witness?

Mr. Sterry: All right. Mr. Kelly, will you read that?

Mr. Sokol: You are going to offer that as explaining just what these schedules reflect?

Mr. Sterry: Yes.

(Testimony of John Francis Kelly, Jr.)

Mr. Sokol: Well, why not offer it?

Mr. Sterry: I will, but I want the witness to say that it is correct. He is the man that did the work.

The Witness: Yes; I have read it.

Q. Is that correct? A. Yes.

Mr. Sterry: Then we will offer this into evidence as explanatory of the schedules about to be introduced. And that would be what exhibit?

The Court: It will be received into evidence as Defendant's Exhibit T, is it not, Mr. Clerk?

The Clerk: Yes, your Honor.

The Court: Do you wish that copied into the record at this point?

Mr. Sterry: I don't think it is necessary.

Mr. Sokol: No. I have a copy of it.

Mr. Sterry: Your Honor might read it so as to just understand, although I think I have indicated generally. That is [39] my copy.

Mr. Sokol: Since you have offered it, I should have asked to take the witness on voir dire before it was received. Would you mind if I should question the witness on that now?

Mr. Sterry: Not at all. Go ahead.

The Court: No. I assumed you had no objection, from your statement.

Mr. Sokol: I just want to see.

Mr. Sterry: I assumed that, because I brought some facts from the witness and Mr. Sokol suggested I offer it. But I have no objection to him asking about it now.

The Court: Why don't you wait and take him on cross examination?

Mr. Sokol: That is all right.

(Testimony of John Francis Kelly, Jr.)

Q. By Mr. Sterry: Now, Mr. Kelly, I think I have asked you this: You made a break-down—or not a break-down—you made a summary or a schedule from the time cards of each one of the plaintiffs—and by "plaintiffs" I include the interveners, too, in both this and in the Drake case—showing the call-out times, as explained by this last exhibit? A. Yes.

Q. In the call-out times, then, you include all the overtime shown on every time sheet, except as explained in this last exhibit? A. Yes, sir. [40]

Q. And some of that call-out time might possibly fall into some of those exceptions, but you would have no way of knowing it; you just included it as "call-out time", is that correct? A. Yes; that is true.

Q. I think there was one other exception that you also made, and I do not believe it is reflected there, and that is, the company paid overtime for traveling time, did it not?

A. Yes; it did.

Q. And you did not reflect any travel time in these schedule? A. No.

Q. Do those schedules that I have shown you—you can go through them—do they represent all of the call-out times, as you have testified, as shown by the time cards of the plaintiffs in the Glenn suit?

A. In the Glenn suit.

Q. Plaintiffs and interveners?

A. I believe they are substantially correct. Yes; they are.

Mr. Sterry: I think we are going to have some alphabetical trouble, if your Honor please, in numbering and marking all of these. We now offer these all into evidence.

(Testimony of John Francis Kelly, Jr.)

The Court: Are they different individuals?

Mr. Sterry: Oh, yes. [41]

Mr. Sokol: One for each.

Mr. Sterry: These comprise every plaintiff—and by the word "plaintiff" I include the interveners in the Glenn suit and all in the Drake suit—I would not say that; there may have been some interveners since.

Mr. Sokol: Your Honor, you see, as far as the log records are concerned they only put in a sample of those; but as far as these particular schedules are concerned, I understand they have one for each plaintiff and intervener.

Mr. Sterry: And intervener.

The Court: Very well. Are they arranged in alphabetical order ?

Mr. Sterry: I do not think so, your Honor.

The Clerk: Yes; they are.

Mr. Woodbury: Yes; they are.

The Court: Any objection to receiving them into evidence?

Mr. Sokol: No. I will object on the ground that the schedules are immaterial. I would like to say this, your Honor: It seems that the basis for offering these schedules into evidence is that there is an attempt to show by this evidence that the sleep of the plaintiffs and interveners could not have been disturbed very much, if at all, because of the fact that the call-out times in certain, if not all, of the cases was infrequent. It is my position, your Honor, that the question of whether or not the sleep was disturbed is not a [42] factor in the determination of this matter; the sole criterion for determination is whether or not the defendant corporation had control of the time spent.

(Testimony of John Francis Kelly, Jr.)

The Court: It is a matter of argument, isn't it?

Mr. Sokol: Yes.

The Court: I take it that these schedules would be material as part of the circumstances. Conceivably a man might be called out every hour. I suppose that would be fairly disturbing, and that might bring one result: whereas, if he received a call sporadically, received calls only occasionally that might bring another result. In either event we would have to know the circumstances, wouldn't we?

The schedules will be received into evidence and will be marked, commencing with Defendant's Exhibit U through to Z, and then commencing with AA, AB, AC and so on. How many are there, Mr. Sterry?

Mr. Woodbury: 49, I believe.

Mr. Sterry: There are 49, they say, in the present case.

The Court: If you will hand them to the clerk, and we will identify them in the record.

Mr. Sterry: You had better put a pencil mark on that as the Glenn case.

Mr. Sokol: I should correct the record. There is one for each of the substation plaintiffs and the hydros.

Mr. Sterry: There are not many for the primary service [43] men, because they are in a category entirely different, and I do not think would be subject to that.

The Court: The schedule for H. L. Andersen will be Exhiibt U; for A. G. Austin will be Exhibit V; for C. C. Blenis, will be Exhibit W; for H. A. Boynton, will be Exhibit X; for W. B. Burton will be Exhibit Y. There are two sheets on the W. B. Burton; they will be Exhibit Y-1 and Exhibit Y-2?

(Testimony of John Francis Kelly, Jr.)

E. K. Dickerson, the sheet covering him will be Z.

The sheet covering F. E. Downs will be Exhibit AA.

The sheets covering M. M. Edgerton will be AB-1 and AB-2; there are two sheets.

E. L. Ellingford, two sheets, they will be Exhibit AC-1 and AC-2.

A. E. Fontaine will be Exhibit AD.

C. E. Foster will be Exhibit AE.

C. R. Frazier, two sheets, will be Exhibits AF-1 and AF-2.

M. E. Glenn will be Exhibit AG.

R. C. Green will be Exhibits AH-1 and AH-2.

R. C. Griener will be Exhibit AI-1 and AI-2.

L. G. Hagerman will be Exhibit AJ.

P. G. Hanlon will be Exhibits AK-1 and AK-2.

L. W. Hennig will be Exhibit AL.

J. A. Henle will be Exhibit AM.

W. E. Hogg will be Exhibit AN.

O. G. Horne will be Exhibits AO-1 and AO-2. [44]

W. S. Hostetler will be Exhibits AT-1 and AT-2.

L. F. Hudson will be Exhibit AQ.

L. E. Jackson will be Exhibit AR-1 and AR-2.

Frank Johnson will be Exhibits AS-1 and AS-2.

H. S. Kaneen will be Exhibit AT.

H. J. Krekeler will be Exhibit AU.

S. F. LaFond will be Exhibits AV-1 and AV-2.

George Frank Larsen will be Exhibits AW-1 and AW-2.

P. L. Lowery will be Exhibit AX.

B. E. Moses will be Exhibits AY-1 and AY-2.

E. M. Kirste will be Exhibits AZ-1 and AZ-2.

(Testimony of John Francis Kelly, Jr.)

H. E. Mayes will be Exhibits BA-1 and BA-2.
F. E. McClanahan will be Exhibits BB-1 and BB-2.
J. W. McKernan will be Exhibits BC-1 and BC-2.
L. S. Morgan will be Exhibits BD-1 and BD-2.
C. S. Myrenius will be Exhibit BE.
A. L. Neff will be Exhibits BF-1 and BF-2.
V. Neher will be Exhibit BG.
T. E. Osborne will be Exhibit BH.
M. S. Poston will be Exhibit BI.
J. W. Rodenbeck will be Exhibits BJ-1 and BJ-2.
J. C. Schrader will be Exhibits BK-1 and BK-2.
F. D. Schwalbe will be Exhibits BL-1 and BL-2.
G. W. Stark will be Exhibits BM-1 and BM-2.
(No exhibit was marked with the designation "BN".) [45]
E. N. Sweitzer will be Exhibits BO-1 and BO-2.
A. Tregoning will be Exhibits BP-1 and BP-2.
H. A. Trunnell will be Exhibits BQ.
V. V. B. Wert will be Exhibits BR-1 and BR-2.

Q. By Mr. Sterry: I now show you further schedules on that and ask you if those are the plaintiffs and interveners in the Drake case that were prepared by you?

A. Yes; they are.

Mr. Sterry: And we offer these into evidence. Wait a minute.

Q. They were prepared in the same way?

A. In the same manner; yes, sir.

Q. To show exactly the same thing as the others?

A. The same, identical.

Mr. Sterry: We offer these, then, into evidence.

(Testimony of John Francis Kelly, Jr.)

The Court: Is the last exhibit number "BR", Mr. Clerk?

The Clerk: Yes, your Honor.

The Court: Is there objection?

Mr. Sokol: The same objection.

The Court: The objection is overruled. These documents will be received into evidence and will be marked Defendant's Exhibits as follows:

The sheets covering W. W. Bennett will be Exhibits BS-1 and BS-2.

The sheet covering F. V. Brimmer will be BT. [46]

The sheets covering H. E. Collins will be Exhibits BU-1 and BU-2.

The sheet covering R. F. Drake will be Exhibit BV.

Mr. Sterry: Now, if your Honor please, my impression is—I have not checked—my impression is that there have been one or two interveners in the Drake case since these schedules were made up. And your Honor made an order this morning in effect permitting interventions in the Drake case up to and including the first of April, if I remember. And we want to reserve the right, of course, to make schedules for each one of those as they come in. As we make them, I will send copies to counsel and expect to offer similar ones at the trial.

I do not think there is any need of taking up the court's time for any further pre-trial, because they will be exactly the same.

There is one thing I do want to ask of counsel before I proceed in this matter. I have indicated, I think, an en-

(Testimony of John Francis Kelly, Jr.)

tire desire to assist counsel as far as I can. I know Mr. Sokol wants to assist me in making it as expeditious as possible. I do not believe it is possible—well, anything is "possible"—but I do not believe it is feasible to try to make digests of all of the log books. As a matter of fact I doubt if physically it could be done between now and the time of trial. We have tried to make those which we think are representative, and are prepared and will be prepared at the trial to offer [47] evidence on them.

Now, counsel stated a little while ago that he would give it further consideration. And I want to ask him now, in open court, to try to let me know whether or not, within a reasonably short period, he wants others—he has already asked, I think for three or four—if he wants others to be included. If he will let us know, but not right at the eve of trial, we will be very glad to have them made. But, as your Honor can well imagine, there are not many men qualified to make it. First, it has to be a man who has some unusual intelligence and a man who is familiar with that kind of work; and Mr. Lyon, who was here, impressed me very favorably and I think he is about the only one available. He is actually working, and it takes time to get him off and arrange for somebody else to be there; and it takes tremendous time for him to go through, because he has not only to go through the logs, but he has to then take the time sheets and balance them. I don't know anything more about him than your Honor does, but from what I have talked with him, he impresses me as being tremendously conscientious in it; and I do not think you can hurry it, because I do not think he would intentionally want to make a mistake either way.

(Testimony of John Francis Kelly, Jr.)

So I would ask counsel now—the case is set for the 25th, I think, of February—I would ask him to advise me by the middle of January whether there are any more he wants; and [48] if not, whether he will stipulate that those are fairly representative. I do not say that they are actually representative. I doubt if you could get anything, because there are slight variations.

Mr. Sokol: I will do my very best in that regard. What I will do, I will get the best men on those substations that I know of to go over all of them and state to me whether or not they think they are representative.

The Court: As to any additional ones you may wish, Mr. Sokol—

Mr. Sokol: By January 15th?

The Court: Can't we get a reasonable deadline now?

Mr. Sokol: January 15th is agreeable with me.

Mr. Sterry: I think that I should know not later than January 15th, because, as your Honor can understand, it does take a tremendous amount of time.

The Court: It is understood, as I understand it now, that you gentlemen agree that, by January 15th, you, Mr. Sokol, will let Mr. Sterry know if you desire any further recapitulations of log books.

Mr. Sokol: That is correct.

The Court: Would that apply to these schedules that were last introduced?

Mr. Sterry: And that was one of the reasons I wanted a deadline on intervention, because I intended to have one of [49] those schedules for every one of these.

If your Honor please, there will be a lot of mathematical calculations on all of those which we did not have

(Testimony of John Francis Kelly, Jr.)

time to make, and we will study and Mr. Sokol can be studying.

For instance, we had computed the number of call-out times to the days of work, etc. Just taking at random Mr. Bennett, who is shown here—he is in the Drake case—during July of '43 he got a call-out, an average of one call-out to 23 days; during the next month, 1 to 21 days; during the next month, none; then the next month, 1 to 24. Then he was 1, 2, 3, 4, 5 months without any call-outs. A lot of them have run many months without it; others, where they are stationed where they have had storms, have had a great many more. But it would be a Herculean task, and it would be a very confusing and difficult task for the court to try and get the balance and go through and summarize all of these. So I intended to have a general balance struck for the whole time. We did not do that because we just did not have time, but I am intending to have similar sheets made of these for every intervener from now on in the Drake case.

Mr. Sokol: Frankly, I do not intend to burden this court with any requests on those log sheets, either, because that would be an unnecessary burden on the court. But I may—right now I do not feel that I am going to request any—but after going over the matter, if there are any requests from [50] any of those people, they will be whittled down considerably.

The Court: Did the clerk hand you back that sheet that you passed up to me?

Mr. Sterry: That was my copy.

The Court: A copy of Exhibit T, your copy of Exhibit T?

(Testimony of John Francis Kelly, Jr.)

Mr. Sterry: Of Exhibit T.

The Court: Is there anything further from Mr. Kelly?

Mr. Sokol: Yes; just a few questions.

Mr. Sterry: Pardon me just a second. I thought I had one question. It could not have been important, I guess.

Q. I think, Mr. Kelly, looking still at this sheet of Mr. Bennett's, that it is indicated in your explanatory statement at the head that this line means where there was one continuous call-out running over from the night of one day into the next, is that correct? A. Yes.

The Court: Which line do you refer to?

Mr. Sterry: (Indicating to the court on Exhibit BS-1.) To that line.

The Court: It would be a line opposite the month "October" on the sheet?

Mr. Sterry: You see, this is of all months.

The Court: The W. W. Bennett sheet 1.

Mr. Sterry: You see, there are two lines, if your Honor please. The one that is straight up and down shows more than [51] one call-out in one day; the other, as I understand—and correct me—as I understand, this shows that where a man has a call-out, say, at 11:00 o'clock tonight and it continues over into tomorrow, it is the same call-out but it is charged to two different days.

Q. Am I correct in that or not, Mr. Kelly?

A. That is right.

The Court: The legend at the top of the sheet explains it.

The Witness: There is a legend that explains that.

The Court: Referring to the schedules.

Mr. Sterry: To the schedules.

(Testimony of John Francis Kelly, Jr.)

The Court: Which have been introduced as Exhibit U to BV, inclusive, covering both the Glenn and the Drake cases.

Mr. Sterry: All right. Pardon me. Go ahead.

Cross-Examination

By Mr. Sokol:

Q. Mr. Kelly, in general, I understand that these last schedules that were introduced in evidence reflect call-out time in this sense: For certain time the Edison Company paid overtime, is that correct?

The Witness: Would you repeat that question again, please?

Mr. Sterry: Let the reporter read it. [52]

The Court: Please read it, Mr. Reporter.

(Question read by the reporter.)

A. Yes.

Q. By Mr. Sokol: Now, that overtime did not include the standby time, is that correct, that paid overtime? It merely was the emergency call-out time, is that correct?

Mr. Sterry: Mr. Sokol, I do not want to be technical. On the other hand, I do not want to have an answer to a question in a form that may mislead.

Mr. Sokol: I understand your objection. I will withdraw that question.

The Court: Can we agree upon this.

Mr. Sokol: Yes.

The Court: As I understand from the explanation that has been made, these call-outs cover a period when a man actually did something; it was not while he was waiting to do something?

(Testimony of John Francis Kelly, Jr.)

Mr. Sterry: That is true.

The Court: It was while he was doing something, and usually it was after hours, usually in the night time?

Mr. Sterry: That is what we designated, as I remember, in our Answer as "night time hours." I am willing to stipulate with Mr. Sokol as follows: These men were all paid a monthly salary; they were not in the substations, with exceptions that need not be here mentioned; they were required to remain on the station property during 5 days a week except when we had a real emergency, and then for 6 days a week. [53] Now, after what is denominated, you might say, the normal working hours, the night time hours, whatever you want to call them, if they made a call to go to the station and make a switch or do anything else, they were paid overtime for that.

Mr. Sokol: That is the call-out time.

Mr. Sterry: That is the call-out time.

The Court: It presupposes, as I understand it, the man has done his 8 hours work; he quits at 5:00 o'clock; at 8:30 he may be called upon to do something.

Mr. Sokol: Called down to the substation; if he is called out of his home to go down to the substation; just across the way.

The Court: And these schedules that you have last identified here cover actual call-out, not standby, waiting to be called out; is that correct?

Mr. Sokol: That is the way I understand it.

Mr. Sterry: That is correct.

Mr. Sokol: There is one other—

Mr. Sterry: The question as to whether the company is liable for that so-called standby time, and if so, how

(Testimony of John Francis Kelly, Jr.)

much, is one of the issues in the case which is not intended to be covered by these schedules, except these schedules show the amount of actual times they are called out, which may be a factor in determining that. [54]

The Court: I suppose that when it comes to the argument, that the argument will be made that the experience should be some determining factor in showing whether a man is actually at work when he is subject to call. I mean what he may reasonably expect. It may be the experience that a man might usually expect to be called out every other night; it may be the experience on some stations that he may not reasonably expect a call once in 6 months.

Mr. Sokol: Or just in the stormy period of the year.

Q. I will ask you, Mr. Kelly, suppose a man had telephone calls but he did not get paid for those telephone calls, accumulated telephone calls that he answered; that particular time would not be reflected on these schedules, is that correct? A. Yes.

Q. Do you mean that time would be reflected on the schedules?

A. No; I mean that it would not be reflected on those schedules.

Q. Now, in the event a man, an employee-plaintiff here, turned on street lights but was not paid emergency overtime for that work, that also would not be reflected on these schedules?

Mr. Sterry: Well, now, wait a minute. Again, there might be some technical objection to the form of that question [55] as you put it, that he did not get paid for it. If that was at the time in which the company

(Testimony of John Francis Kelly, Jr.)

did not pay him, and he did not show it on his time card, why, that would be true. If at that time the company did make a habit of paying it and he did not turn it in, did not put it on his time card, he would not get it; but if he put it on his time card and, through some inadvertence, maybe, it is checked out wrong, it would still be reflected. As I understand, Mr. Kelly did not make these up from payroll records, btu made it up from the actual time cards as they turned them in.

Mr. Sokol: I will accept that as the answer of the witness.

The Court: Very well.

Q. By Mr. Sokol: What did you use in getting up these schedules, what material?

A. The material consisted of the daily time sheets, the weekly time sheets, and the monthly time sheets.

Q. And what you first looked for was what emergency overtime they got paid for, is that right?

A. That is the first basis we worked on; yes, sir.

Q. When they were on the Manpower Commission order for the 48-hour week, you know, when they were on the 6-day week under the Manpower Commission order— A. Yes.

Q. —then they got paid 8 hours on the 6 days, didn't [56] they, overtime, 8 hours overtime? A. Yes.

Q. Did you include that 8 hours in your computation of call-out overtime paid? A. No.

Q. Nor did you include the standby time—I will call it "standby time"—on that 6 days, that is, the balance of the 24 hours; you did not include that in any call-out time in your schedules?

(Testimony of John Francis Kelly, Jr.)

The Witness: Could you be just a little clearer in that?

Mr. Sokol: I think the court understands it. The same thing applies.

Mr. Sterry: I will stipulate to that.

Mr. Sokol: You stipulate to that.

Mr. Sterry: I will tell you, for your information, that we had many conferences as to what would be called-outs, and it was my instruction that the time cards reflect only those things, as your Honor said, where he was actually called out to do something after normal hours.

Mr. Sokol: I just wanted it clearly understood that that 8 hours under the 6-day Manpower Commission order which was paid as overtime is not reflected as call-out time in these schedules.

Mr. Sterry: That was one of the very things that was shown in this explanation. [57]

The Court: This Exhibit T excludes that?

Q. By Mr. Sokol: What else besides the payment of overtime did you look for in the daily, weekly and monthly time reports in arriving at these schedules?

A. Well, the work descriptions were analyzed also.

Q. For what purpose?

A. For the purpose of determining a call-out.

Q. Will you explain that? Give us one example of that.

A. In a sense of the word, the call-outs, we speak of "call-outs" on those time reports where they were listed in various manners by various people. It is to be assumed that no two persons would make it out alike; so, by carefully analyzing those things beforehand, before this sched-

(Testimony of John Francis Kelly, Jr.)

ule is prepared, I mean that we analyzed the work description, plus the hours of call-outs. Is that clear?

Q. Yes. You could not make a statement with respect to the general time of the day or night when the call-outs occurred, principally?

A. Of a general nature?

Q. Yes. A. No.

Mr. Sokol: That is all.

The Court: In other words, your record would not show whether it was in the daytime or the nighttime? [58]

The Witness: In some respects, your Honor, yes; in some respects, no.

The Court: When you say you analyzed the nature of the work, do you mean by that that you looked at the time sheet to see what the man was doing in order sometimes to determine whether it was call-out work or not?

The Witness: Yes.

The Court: That is all I have.

Mr. Sokol: That is all.

Mr. Sterry: That is all.

The Court: You may step down.

Mr. Sterry: Your Honor, before proceeding with the next witness, my friend, Mr. Woodbury, is afraid that I may not have been quite technical enough in answering some of the questions when I stated that it did not reflect payments of certain time. One of the issues of course, here, and one of the claims of the defendant, is that monthly salary was payment for all time, whether it be regarded as active or inactive duties. But it is difficult, either here or during a trial, to always make statements with reference to a factual situation that embraces all

(Testimony of John Francis Kelly, Jr.)

facts; and I simply want to call that to the court's attention in my explanation.

The Court: As I understand it, defendant contends with respect to these station attendants that their salary contemplated everything that they did? [59]

Mr. Sterry: That is one of the issues involved that your Honor, after hearing all the facts, will have to determine. I did not mean to take that away when I said that these schedules did not intend to show any payments for that time. All I meant to say was that all it was intended to show was simply the call-outs, as we had explained that. I am quite sure your Honor understands it.

The Court: Yes; I understand that to be the defendant's contention throughout.

Gentlemen, I will interrupt at this time to call the 2:00 o'clock calendar.

(Short interruption for other court proceedings.)

Redirect Examination

By Mr. Sterry:

Q. Mr. Kelly, there is just one question that I wanted to ask you. Mr. Kelly, without going through all these schedules that you made up, I know that some of them are for short periods of time, and I will ask you generally: They cover all of the time that a man was working in that particular work, do they not, during the period involved in this suit? A. Yes.

Mr. Sokol: Excuse me. Except that it stops at—

Mr. Sterry: Now you are referring to—

Mr. Sokol: It is not right down to date. The last few [60] months are not included in the schedules.

(Testimony of John Francis Kelly, Jr.)

The Witness: What months are we speaking of?

Mr. Sokol: I think you went down to October.

Mr. Sterry: Oh, yes; you are correct.

Mr. Sokol: October, 1945.

Mr. Sterry: We had a stopping date. We stopped at October.

Q. What closing date did you have?

A. I believe it was October, 1945.

Q. Yes; that is correct. From the time of the applicable period of this suit, it included all the time that he was in there down to that date which we took for a closing date? A. Yes, sir.

Q. And that work started way last year, did it not? I mean when you first started making these schedules that was more than a year ago, was it not, Mr. Kelly?

A. To be correct, I believe we finished in June, 1946.

Q. Well, you started many months before that, didn't you?

A. I believe over a period of three months, approximately three months.

Mr. Sterry: All right; thank you.

The Court: Then, as I understand it, gentlemen, these schedules which comprise Exhibits U to BV, both inclusive, cover down through October, 1945 and cover the period indicated [61] on each sheet?

Mr. Sterry: On each sheet.

The Court: But that period purports to be the entire period of the employment of the person named?

Mr. Sokol: That is correct.

Mr. Sterry: In that particular department during the applicable period of this lawsuit.

(Testimony of John Francis Kelly, Jr.)

The Court: Now, that would be?

Mr. Sokol: March, 1942, down to date.

The Court: Irrespective of limitations?

Mr. Sokol: The 3-year Statute.

Mr. Sterry: No; you take the 3-year Statute.

Mr. Sokol: Yes; we took the 3-year. That took it back to March, 1942. We filed in March, 1945, so that, by the Statute, it took it back to March, 1942.

The Court: These schedules go back as far as March, 1942?

Mr. Sterry: Wherever the man was employed at that time. You see, there are a lot of them are short. When you come to examine them, a few of them run through almost the entire period and others run through for only a short period of time.

The Court: The period covered by the investigation made in compiling is from March, 1942 through October, 1945, is that correct?

The Witness: —That is right; yes, sir. [62]

Mr. Sterry: And, if your Honor please, you will also note—you probably won't now because you won't study these—that some of the men who are here will also appear in the hydros which we are about to put in, and that is because they have been changed. One man worked for a time in the hydro department and then for a time in substations, and you only find substations.

The Witness: Yes, sir.

Mr. Sterry: That is all, Mr. Kelly.

F. W. BANKS,

called as a witness by defendant, being first sworn, was examined and testified as follows:

The Clerk: Please state your name.

The Witness: F. W. Banks.

Direct Examination

By Mr. Sterry:

Q. State your name in full.

A. Francis Webster Banks.

Q. And you live where? A. San Bernardino.

Q. And you are employed by the defendant, Southern California Edison Company? A. I am. [63]

Q. In what department?

A. In the southern division of the hydro generation department.

Q. You say you live in San Bernardino. Where is your place of work? A. In San Bernardino.

Q. The Edison Company office there?

A. In the division office.

Q. You have heard Mr. Kelly's testimony?

A. I have.

Q. And you have been present at several conferences that I referred to in my statement to the court, when we were determining the form for these schedules?

A. Yes.

Q. And I think you are also familiar with the exceptions which are made in that Exhibit T? You have seen that? A. I have.

Q. Did you prepare similar schedules for the men in the hydro department to the ones prepared by Mr. Kelly of the substations? A. Yes.

(Testimony of F. W. Banks)

Q. And that covered the same period of time that he has just testified about? A. Yes; it did.

Q. That was from March, was it, of 1942 down through [64] October of 1945? A. Yes, sir.

Q. I show you a series of schedules and ask you if those are the hydro plaintiffs, including in the word "plaintiffs" interveners in the Glenn case? A. They are.

Q. Are there any men in the hydro division in the Drake case? A. Yes.

Q. How many, if you remember? A. One.

Q. One schedule is in there? A. It is.

Mr. Sterry: Unless there is more detail, I think that is sufficient. I will offer these schedules into evidence.

Mr. Sokol: The same objection, your Honor, as to materiality.

The Court: Objection overruled. The documents are received into evidence and will be marked as follows:

The sheets, two of them, covering G. H. Bartholomew, will be marked Defendant's Exhibits BW-1 and BW-2.

The sheets marked Merle Bartholomew will be marked Defendant's Exhibits BX-1 and BX-2.

The two sheets covering L. H. Bell will be marked Defendant's Exhibits BY-1 and BY-2. [65]

The single sheet covering F. V. Brimmer will be marked Defendant's Exhibit BZ.

The two sheets covering J. J. Bryan will be marked Defendant's Exhibits CA-1 and CA-2.

The two sheets covering E. G. Eggers will be marked Defendant's Exhibits CB-1 and CB-2.

(Testimony of F. W. Banks)

The two sheets covering F. E. Griffes will be marked Defendant's Exhibits CC-1 and CC-2.

The single sheet covering L. G. Hagerman will be marked Defendant's Exhibit CD.

The single sheet covering M. H. Huntington will be marked Defendant's Exhibit CE.

The two sheets covering R. B. Johnson will be marked Exhibits CF-1 and CF-2.

The two sheets covering Fred Ray will be marked Defendant's Exhibits CG-1 and CG-2.

The single sheet covering M.E. Roach will be marked Defendant's Exhibit CH.

The two sheets covering Clarence Rogers will be marked Defendant's Exhibits CI-1 and CI-2.

The single sheet covering G. C. Wooldridge will be marked Defendant's Exhibit CJ.

Mr. Sterry: If your Honor please, there is just one possible mis-statement or it might be misleading. The schedules went back, as stated, to March of 1942, but in the [66] Drake case they only went back 3 years from date that it was filed, to July of 1943, would it not be?

Mr. Woodbury: Yes.

Mr. Sterry: Now, if your Honor please, at the other or last pre-trial order, we announced that neither side were introducing documents, and the pre-trial order required counsel to exhibit to each other all the documents they intended to introduce, except of impeachment; and we filed, pursuant to that order, a stipulation—I can't remember it—in which we listed the documents exhibited

(Testimony of F. W. Banks)

to each other, and included in those documents, in a sort of booklet form, are general orders which I have supplied counsel with a copy of. And we stated in there that each of us desired to reserve the right to introduce anything further at the trial that further study should develop. But my personal opinion is that there isn't anything further. I do not mean by that, that there are not many, many orders, but I think they are probably similar. I do not see the purpose of introducing those right now. They can be agreed to.

But Mr. Sokol has some other and additional documents that he asked me Thursday to get. He asked me to bring up here Thursday some additional documents. I got everything except one, which was not in town and I could not get, and put those in, but I would not want to be precluded from introducing other documents that I saw were called for by those [67] documents. I have not had time to study them or examine them.

The Court: Do you wish these orders referred to?

Mr. Sokol: I desire them put in.

The Court: Marked at this time?

Mr. Sokol: Yes, your Honor. I desire to have them offered into evidence.

The Court: I am referring now to the matters just referred to by Mr. Sterry. I believe they are referred to as Item 6 on page 8 of the pre-trial stipulation.

Mr. Sokol: Yes. I have the orders here.

The Court: Do you have those?

Mr. Sokol: Yes. I want to offer them.

The Court: Very well. Have you anything further, gentlemen, from Mr. Banks?

Mr. Sokol: Nothing.

Mr. Sterry: Now, may both Mr. Banks and Mr. Kelly be excused? Mr. Banks lives in San Bernardino.

Mr. Sokol: No objection.

Mr. Sterry: I don't know whether Mr. Kelly wants to wait and go down or not.

The Court: Mr. Banks and Mr. Kelly are both excused from further attendance.

Mr. Sokol: At this time, your Honor, I would like to offer into evidence "Substation Division Order No. A-36 of [68] the Operating Department Substation Division Revised January 1, 1942," consisting of—

Mr. Woodbury: Isn't that in that book?

Mr. Sokol: Yes. I have taken them out.

Mr. Sterry: Why don't yon offer the whole book?

Mr. Sokol: I think that would be a little confusing for the record. This consists of 6 pages, this particular order.

The Court: Is there any objection?

Mr. Sterry: No objection, your Honor.

The Court: The document is received into evidence and will be marked Plaintiff's Exhibit—is it the first exhibit?

Mr. Sokol: No. Didn't I have a "1"?

Mr. Sterry: I do not think you have offered any other.

Mr. Sokol: That will be 1.

Mr. Sterry: I think, so far as any of these orders are concerned, they probably are admissible as such. The effect of them on any of the issues is possibly debatable, but that is not a matter to be discussed here on that. They are our orders, and if any portion should be immaterial, the court can decide that on the merits just as well as it can now.

Mr. Sokol: Is that received, your Honor?

The Court: Yes; and will be marked Plaintiff's Exhibit 1. Is that correct, Mr. Clerk?

The Clerk: I think so. I would like to look at the record. [89]

Mr. Sterry: It is my impression, Mr. Clerk, and I would not want to be bound by it, that nothing was offered at the other pre-trial hearing.

Mr. Sokol: I do not remember.

The Clerk: This will be Plaintiff's Exhibit 1.

Mr. Sokol: I would now like to offer as Plaintiff's Exhibit 2 "Substation Division Order No. A-36", entitled "Operating Department Revised January 1, 1943 Working Conditions and Payment of Wages."

Mr. Sterry: Now, you are not offering just a part; you are offering the whole?

Mr. Sokol: The whole thing, consisting of 6 pages. This is a revision of the first one.

Mr. Sterry: That is all right.

The Court: Exhibit 1 is the A-36 order as revised January 1, 1942?

Mr. Sokol: That is right.

The Court: It comprises 6 pages also?

Mr. Sokol: That is correct. As I understand it, Mr. Sterry, when my Exhibit 2 came out that cancelled Exhibit 1, the first order?

Mr. Woodbury: Superseded it.

Mr. Sterry: Superseded it.

Mr. Sokol: So stipulated.

Mr. Sterry: Now, wait a minute. Mr. Woodbury calls my [70] attention that the one of 1943 was 7 sheets.

Mr. Sokol: Here it is. I am offering that now.

Mr. Sterry: No; that is not the same thing. You offered one, you say, of 6. I will stipulate to the authenticity of anything we furnish you.

Mr. Sokol: Well, you look it over. This had 7 sheets. I am sorry. It is my error.

The Court: Which one is that?

Mr. Sokol: Exhibit 2.

The Court: Exhibit 2 is comprised of 7 sheets?

Mr. Sokol: Yes.

The Court: Exhibit 1 of 6, is that correct?

Mr. Sokol: Yes.

The Court: I think it is well to have the record show these matters and then there can't be any question.

Mr. Sokol: I now offer a one page document as Plaintiff's Exhibit 3, dated April 7, 1943, entitled "Substation Div. Order A-36, Working Conditions and Payment of Wages," and it is signed "C. M. Cavner, Supt. of Substations."

The Court: What is the date of it, please?

Mr. Sokol: Dated April 7, 1943.

The Court: April 7 or 17?

Mr. Sokol: Dated April 7, 1943.

The Clerk: Plaintiff's Exhibit 3.

The Court: Received into evidence. [71]

Mr. Sokol: I now offer as Plaintiff's Exhibit 4 "Hydro Generation Order No. 22," entitled "Operating Department Hydro Generation Division Revised January 1, 1942 Working Conditions and Payment of Wages," and the entire document which consists of—

Mr. Sterry: 6 pages.

Mr. Sokol: 6 pages.

Mr. Sterry: It might be well to state, as Mr. Sokol has read "Working Conditions And Payment Of Wages," and similar expressions, to state those are headings at the top of the instrument or document.

The Court: This last document is dated when?

The Clerk: It was "revised January 1, 1942."

The Court: Is that "Hydro Generation Order No. 22"?

Mr. Sokol: Hydro.

The Clerk: Yes, sir.

The Court: It will be received into evidence and marked Plaintiff's Exhibit 4.

Mr. Sokol: I now offer as Plaintiff's Exhibit 5 a document entitled "Hydro Generation Order No. 22 Revised January 1, 1943." That consists of 7 pages.

The Court: It will be received into evidence and will be marked Plaintiff's Exhibit 5.

Mr. Sokol: May In inquire if you now have Edison Form 100 on the computation of pay, revised June 1, 1943? I have [72] a copy here if you want to check. If you are not prepared on that just now—

Mr. Woodbury: You asked for the form.

Mr. Sokol: No. I wanted the order providing for the method of compensation on these particular employees. Well, I think I will withhold that, so long as I understand that you will not object to the foundation if I offer that at the time of trial.

Mr. Sterry: Mr. Sokol, I can tell you, if you will, any of these that you want. We furnished, if your Honor please, anything he asked for, and then, Thursday Mr.

Sokol asked me for a number of documents and I was not able to get all of them. I am perfectly willing to let him admit this, if he wants to, subject to check. I have not had time to check this.

Mr. Sokol: That is your record.

Mr. Sterry: It looks like it.

Mr. Sokol: Suppose I withhold it and offer it at the time of the trial.

Mr. Sterry: Why don't you withhold it? Why don't you, whenever you get ready, submit these with all of them, and I will simply write you a letter stating to you that we make no objection to the foudation, if they are genuine. I am not disposed to make any objection, in any event, to any of our orders unless they are wholly and entirely immaterial in [73] my viewpoint; that is to say, if they have any question about them, we can meet that in the argument when it comes, rather than have any question. One or two of these later things Mr. Sokol asked for, if he got what he wanted, do not seem to me to have any bearing. In that case, I will object to it. Otherwise, it is my inclination to let it go in and discuss the relevancy of it with the other.

Mr. Sokol: Is it agreeable, since we are here, to introduce these few other exhibits?

Mr. Sterry: That I furnished you? Yes; put them all in.

Mr. Sokol: I mean the ones that I got your copies of? Have you checked those?

Mr. Sterry: Very frankly, I do not remember just what you have. I do not remember giving you a copy of these, Mr. Sokol.

Mr. Sokol: The other day in the office.

The Court: Will you be much longer?

Mr. Sokol: Well, your Honor, we can hold these for the trial.

The Court: No, no. I just thought we would give the reporter some relief.

Mr. Sokol: It should not be over five minutes.

The Court: We will take a recess of five minutes.

(Short recess.)

Mr. Sokol: If the court please, I think it would be [74] better if I would withhold offering any more exhibits, so that they might be of some meaning in the record when the proper testimony is offered. So I will not offer anything further at this time.

Mr. Sterry: I am heartily in accord with that, if your Honor please. Mr. Sokol has introduced some of these general orders 36-A without the accompanying orders of the operating department, which have to be read together, and without the testimony of witnesses they are somewhat meaningless. The reason I put these various schedules in is that they have been worked on by just one or two men and if something happened to them, I might have difficulty in making my proof. But they are in a different situation. I think it is not only proper, but I approve of both sides holding those, subject to the provisions of the court order that we have exhibited to each other before the trial any other documents that we think are pertinent.

The Court: Customarily I try to save the time on pre-trial hearing by marking the exhibits for identification, if there are any considerable number of them. If you wish to do that, we might.

Mr. Sokol: No; there won't be an awful lot, your Honor. I think we will have some later, probably.

Mr. Sterry: I do not believe it will have time, if your Honor please, in this particular case. [75]

The Court: That is the only purpose. That would be the only purpose of doing it. Is there anything further, gentlemen?

Mr. Sokol: Nothing,

The Court: Then let the order prepared in the Drake case show a setting of the consolidated cases for trial on June 3rd at 10:00 o'clock. Is that agreeable, gentlemen?

Mr. Sokol: That is agreeable.

Mr. Sterry: That is agreeable to both sides.

The Court: Very well; that will be the order. And in the Glenn case the court will enter an order setting it for trial at the same time, June 3rd, at 10:00 o'clock. Is there anything further?

Mr. Sterry: Nothing further, if your Honor please.

The Court: Very well; court will adjourn.

[Endorsed]: Filed Sep. 22, 1948. Edmund L. Smith, Clerk. [76]

[Endorsed]: No. 12071. United States Court of Appeals for the Ninth Circuit. Raymond F. Drake, et al., Appellants, vs. Southern California Edison Company, Ltd., Appellee. Transcript of Record. Appeal From the District Court of the United States for the Southern District of California, Central Division.

Filed October 22, 1948.

PAUL P. O'BRIEN

Clerk of the United States Court of Appeals for the Ninth Circuit

United States Circuit Court of Appeals for the Ninth Circuit

No. 12071

(D. C. Civil Action No. 5544-WM)

RAYMOND F. DRAKE, et al.,

Plaintiffs-Appellants,

v.

SOUTHERN CALIFORNIA EDISON COMPANY, LTD., a corporation,

Defendant-Appellee.

STIPULATION EXTENDING PERIOD FOR FILING AND DOCKETING RECORD ON APPEAL

It Is Hereby Stipulated by and between the attorneys for the respective parties hereto:

The time for filing the record on appeal and docketing the action in the Circuit Court of Appeals for the Ninth Circuit is, subject to the approval of the Court, extended to and including October 25, 1948.

Dated: September 23, 1948.

DAVID SOKOL and
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[Endorsed]: Filed Sep. 27, 1948. Paul P. O'Brien, Clerk.

[Title of United States Court of Appeals and Cause]

APPELLANTS' STATEMENT OF POINTS AND DESIGNATION OF PORTIONS OF RECORD FOR PRINTING

To the Clerk of the Above Entitled Court, to the Defendant-Appellee Above Named, and to Its Attorneys, Gail C. Larkin, E. W. Cunningham, Rollin E. Woodbury, Norman S. Sterry, Gibson, Dunn & Crutcher, Esqs.:

The following is the concise statement of points on which plaintiffs-appellants intend to rely on the appeal herein:

Statement of Points

I.

The trial Court erred in granting defendant-appellee's motion for summary judgment.

II.

The trial Court erred in not making and filing findings of fact and conclusions of law.

III.

The trial Court erred in dismissing the action for lack of jurisdiction of the subject matter of the action.

IV.

The trial Court erred in ruling that plaintiffs-appellants were not entitled to overtime compensation under the Fair Labor Standards Act of 1938, as amended.

V.

The trial Court erred in ruling that the certain activities alleged to have been engaged in by each plaintiff-appellant employed were made non-compensable by the Portal-to-Portal Act of 1947.

VI.

The trial Court erred in ruling that the Portal-to-Portal Act of 1947 was and is constitutional generally and as applied to the facts in this case.

VII.

The trial Court erred in ruling that defendant-appellee's motion for summary judgment should be granted.

VIII.

The trial Court erred in ruling that the action seeks to impose a liability upon the defendant employer as to each plaintiff-appellant for alleged activities which were not compensable within the purview of subsections (a) and (b) of section 2 of the Portal-to-Portal Act of 1947.

IX.

The trial Court erred in ruling that under subsection (d) of said section 2 of the Portal-to-Portal Act of 1947 the Court is without jurisdiction of the subject matter of said action.

Designation of Record for Printing

Plaintiffs-appellants designate for printing in the record on appeal the following:

* * * * * * * * *

Dated: November 22, 1948.

DAVID SOKOL and
PACHT, WARNE, ROSS & BERNHARD
By Bernard Reich
Attorneys for Plaintiffs-Appellants

[Affidavit of Service by Mail.]

[Endorsed]: Filed Nov. 26, 1948. Paul P. O'Brien, Clerk.